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FIREARM FELONIES BY FOREIGN DIPLOMATS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2771

A BILL TO PROTECT THE INTERNAL SECURITY OF THE UNITED STATES AGAINST INTERNATIONAL TERRORISM BY MAKING THE USE OF A FIREARM TO COMMIT A FELONY BY FOREIGN DIPLOMATS IN THE UNITED STATES A FEDERAL FELONY

JULY 24 AND SEPTEMBER 21, 1984

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FIREARM FELONIES BY FOREIGN DIPLOMATS

TUESDAY, JULY 24, 1984

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:17 a.m., in room SD-226, Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Also present: Senator Specter.

Staff present: Joel S. Lisker, chief counsel and staff director, Subcommittee on Security and Terrorism; Gerald Everett, congressional fellow; Fran Wermuth, chief clerk; and Bruce King, counsel, Senator Specter's staff.

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator DENTON. Good morning. This hearing will come to order. I want to welcome my colleague from Pennsylvania. He has played a unique role in the development of the legislation which is before us today, and I want to acknowledge that, although he serves on the Judiciary Committee and is not a member of the Subcommittee on Security and Terrorism, he has had a gnawing ambition to do something about that which we shall be discussing, which is the motivation of the origination of this legislation.

I wish to pay public tribute to him for his public spiritedness in that because it was not within his assigned mandate in subcommittee and committee. It was simply a personal urge to do something about an abuse, a danger which threatens not only this country's interests but those of many others and individual rights, civil rights if you will, around the world.

And Senator Arlen Specter will be the first witness this morning. After he testifies, we will have Daniel W. McGovern, the Principal Deputy Legal Advisor, Department of State; Terrell E. Arnold, Principal Deputy Director, Office for Counter-Terrorism and Emergency Planning, Department of State; Robert E. Dalton, Assistant Legal Advisor for Treaty Affairs, Department of State; and Dr. Martin Sicker, Director of the Center for International Security.

The event which focused Senator Specter's and my attention on this problem as well as, I am sure, got the attention of many officials around the world is an event that took place at 10 o'clock in the morning of April 17, 1984. It was a peaceful demonstration taking place outside the Libyan Embassy in London. The police were fully in control of that demonstration, and there was no problem with public order.

Suddenly, without warning, shots from an automatic weapon were fired from an Embassy window. Twelve people were hit, including a woman police constable, Yvonne Fletcher, who died a short while later from her wounds. Subsequent investigation by Scotland Yard revealed that the shots were fired by an individual inside the Libyan Embassy who had diplomatic immunity.

Because of that diplomatic immunity, Miss Fletcher's killer was able to walk out of that Embassy a free man, and to return to Libya.

That a diplomat would commit such a barbaric outrage—cold-blooded murder—would have been unthinkable 10 years ago. But, beginning most notably with the capture of our diplomats in Tehran in 1979, certain countries, such as Iran and Libya, have exhibited a callous disregard for the norms of diplomatic behavior, and have adopted, as national policy, a practice of engaging in and sponsoring terrorist acts.

I believe that the pending dawn at the time of the Vienna Convention was not anticipated, was not foreseen and was not thought about as they drew up that convention. I really do not share the feeling that if we make the correction this legislation would propose that we would necessarily open up a pandora's box. I think we are in that convention because we all want to be, and I believe that this unique departure from what was some kind of conventional behavior, a norm of thought and behavior, requires some kind of correction. This, I believe, is not an unreasonable approach.

The incident in London was, to my mind, the straw that broke the camel's back. The fact that this barbaric outrage was directed by Colonel Al-Qadhafi himself seems incontrovertible. According to British Foreign Secretary Sir Geoffrey Howe, officials of the Libyan Embassy visited the Foreign Office after midnight on April 16 to protest against a demonstration to be held the next morning, and to say that the Libyans would not be responsible for its consequences. According to widely published press accounts, instructions were cabled from Tripoli to the Libyans in London to fire on the crowd.

In later closed hearings, if necessary, we can go into alleged other instructions cabled from Tripoli which I think would reinforce the need for such legislation.

What should our reaction to these events be? Our loyal British allies, led by Prime Minister Thatcher, have called for the following from the international community of civilized nations:

One, closer cooperation in the exchange of information about threatened acts of terrorism and those engaged in terrorism activity.

Two, the expulsion or exclusion of known terrorists, including people with diplomatic status who are suspected of involvement in terrorist activities.

Three, the strict enforcement of the Vienna Convention as it affects the status of diplomats, the size of diplomatic missions, and the number of buildings enjoying diplomatic immunity.

Four, a study and examination of the implications of international terrorism for the rules of the Vienna Convention.

It is that fourth one, a study and examination of the implications of international terrorism for the rules of the Vienna Convention, upon which this legislation focuses.

Five, an examination by every country to see whether its own domestic legislation contain any gaps which might be exploited by terrorists. And our hearings are a part of that examination.

Six, a review by every country of its policy on selling arms to states supporting terrorism.

Those were the six points which the British have called for in response to the set of circumstances that took place that day.

The British Government has kindly provided us with a report of the responses of the British Foreign Office—this is the formal report—and the Home Office to inquiries about the April 17 incident posed by the Parliament's Select Committee on Foreign Affairs.

The data are here. The report is here.

The data provided also include a note from the British Foreign Office to the Libyans regarding the status of the People's Bureau as an Embassy, dated June 12, 1980; a statement by British Foreign Secretary Sir Geoffrey Howe to the House of Commons Foreign Affairs Committee, dated July 18, 1984; and a series of notes from the British Foreign Office to diplomatic missions in the United Kingdom regarding the possession and use of firearms by persons enjoying diplomatic privileges.

Without objection, I will enter for the record this wealth of very helpful data provided by Her Majesty's Government, and hearing no objection, it is so ordered.

[Material referred to above follows:]

With the compliments of
THE BRITISH EMBASSY

M E Pellew

WASHINGTON, D.C.

* * * * *

SELECT COMMITTEE ON FOREIGN AFFAIRS
MEMORANDUM BY THE HOME OFFICE
DIPLOMATIC PRIVILEGES AND IMMUNITIES

Question (a) What problems are caused to the Home Office and the police in their work by the operation of, and actual or potential abuse of, the Vienna Convention?

I. Introduction

1. The Commissioner of Police has been consulted and this memorandum has been prepared with the benefit of his advice. Part II of this memorandum deals with the position arising under those articles of the Vienna Convention on Diplomatic Relations which confer certain privileges and immunities on members of a diplomatic mission. It may be helpful, first however, to refer briefly to certain provisions of the Convention which concern the physical protection of diplomats and diplomatic premises, the duties and obligations of diplomats themselves and the remedy open to a receiving state in the event of unacceptable behaviour by diplomats. The police have a general duty to maintain the peace, but Articles 22, 29, 30 and 37 of the Vienna Convention place a special duty on a receiving State to protect the premises of a diplomatic mission and the private residences of diplomatic agents and of administrative and technical staff and to take appropriate steps to prevent any attack on the person, freedom or dignity of diplomatic agents and their families and on the administrave and technical staff and their families (if not nationals of the receiving State or permanent residents). The burden of ensuring that these special duties are fulfilled falls to the police who are dependent on the willing cooperation of missions when carrying out their duties. In turn, Article 41.1 of the Convention places a duty on all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State, and also a duty not to interfere in the internal affairs of that State; and Article 41.3 confers an obligation on the sending State not to use the premises of the mission in any manner incompatible with the functions of the mission as laid down in the Convention (viz Article 3) and under general international law.

2. The existence, by virtue of Articles 29 and 30 of certain immunities and privileges may limit the action which the police can take when investigating and preventing crime; but when evidence is available of an entitled person's involvement in breaches of the criminal law, Article 9 of the Vienna Convention enables the receiving State to notify the sending State that the head of mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff is not acceptable. The police and the Home Office therefore maintain close links with the Foreign and Commonwealth Office and all incidents known to the police involving persons entitled to diplomatic privileges and immunities are reported to them. (See answer to question (b) below).

II. RELEVANT ARTICLES OF VIENNA CONVENTION

Inviolability of Premises and Special Duty to Protect

5. Article 22 provides that the premises of a mission are inviolable; and agents of the receiving State may not enter them without the consent of the head of the mission; the premises, together with the furnishings and other property thereon and the means of transport of the mission are immune from search, requisition, attachment or execution; the receiving State is under a special duty to protect the premises of the mission and to prevent any distrubance of the peace of the mission or impairment of its dignity.

6. Similar inviolability (and protection) extends to the private residence of a diplomatic agent by Article 30 and to the residences of members of the administrative and technical staff of the mission who are neither nationals of nor permanently resident in the receiving State by Article 37.

7. The immunity of the premises of the mission and of its means of transport has caused and continues to cause problems for the police in their work of preventing and responding to acts of terrorism. Incidents have occurred when the police have had strong grounds for believing that diplomatic premises contained illegally held arms and explosives which had been or might be used in the commission of acts of terrorism. The police are unable in these circumstances to enter and search the premises for evidence of actual or potential criminal offences. The police are also unable to enter diplomatic premises to deal with breaches of public order. (In April 1984, for example, demonstrators entered the Conrular Section of the Iranian Embassy where they were detained by consular staff who for several hours refused access to the police). Police are entitled to stop vehicles with diplomatic registration to establish that the occupants have diplomatic status.

8. The special duty of the receiving State to protect a diplomatic mission requires the use of police to provide routine security cover. There is thus a continued demand on police manpower which may be considerably increased at times when there is a general or specific threat (eg a terrorist threat) to the premises. But it is doubtful whether this in itself can reasonably be regarded as a "problem" caused by the operation of the Vienna Convention, since the police have a general duty to prevent disorder and threats to the security of

premises and property. However, the police point out that the special duty of protection sometimes provides missions with the excuse for laxity in taking their own security precautions, and this makes the police task more difficult.

Inviolability of Diplomats and Duty to Protect

9. Article 29 provides for the inviolability of the person of a diplomatic agent and for his immunity from any form of arrest or detention; and requires the receiving State to take all appropriate steps to prevent any attack on a diplomat's person, freedom or dignity.

10. Similar inviolability and immunity extends to the members of the family of a diplomatic agent and to members of the administrative and technical staff of a mission and their families, if they are not nationals of or permanently resident in the receiving State.

11. Immunity from arrest or detention prevents the police from arresting or detaining a diplomat suspected of having committed an offence under the general criminal law, or of being involved in the commission, preparation or instigation of acts of terrorism under the prevention of terrorism legislation. The lack of power to arrest a diplomat suspected of having committed a criminal offence may also have the effect of inhibiting the police in their duty to prevent further offences whether by that person or by another person. The view has always been taken that, in exceptional circumstances, the police may take measures to prevent further offences from being committed and that in appropriate cases the police may also invite a person who claims diplomatic immunity at the scene of a crime to accompany them to a police station with a view to the proper establishment of identity. Such action will be achieved by persuasion. Inviolability prevents the police from searching a person with such an entitlement to recover a weapon or explosives which he may be carrying, although the police are entitled to stop a person to establish whether he is a bona fide diplomat. The requirement to provide physical protection makes demands on police manpower in the same way (although not to the same extent) as the requirement to protect diplomatic premises.

The Diplomatic Bag

12. Article 27, paragraph 3 provides that the diplomatic bag shall not be opened or detained, and paragraph 4 that the diplomatic bag may contain only diplomatic documents or articles intended for official use. There are grounds for concern that the immunity of the diplomatic bag is in a few cases seriously abused. Although such abuse of the diplomatic bag violates Article 27.4, the police are prevented by Article 27.3 from opening and searching the diplomatic bag or, by Article 27.1 from requiring that it be returned to the country of origin. Although electronic scanning of diplomatic bags is not prohibited by the Convention it has hitherto been the practice of HMG neither to permit British bags to be scanned nor to scan the bags of others. Scanning is in any case likely to be of limited value in detecting illegal arms and explosives which can be successfuly concealed from it. An abuse of the diplomatic bag is therefore likely to be exposed only if the content of the bag is fortuitously disclosed.

Consular Premises

13. Article 31 of the Vienna Convention on Consular Relations provides inviolability for consular premises, but to a more limited extent than for diplomatic premises. Police are prohibited only from entering "that part of the consular premises which is used exclusively for the work of the consular post" except with the consent of an appropriate consular official. However, that consent may be assumed "in case of fire or other disaster requiring prompt protective action". This gives the police more scope to deal with threats to public order or safety at consular premises, beyond the action they can take at diplomatic premises.

The Consular Bag

14. Article 35 of the Vienna Convention on Consular Relations provides that, like the diplomatic bag, the consular bag shall not be opened or detained. However, there is a rider to this provision to the effect that, if it is believed that the consular bag contains prohibited articles, a request may be made for the bag to be opened in the presence of an authorised representative of the sending State. If this request is refused the bag shall be returned to its place of origin. This, again, gives a somewhat greater power to the police to prevent the abuse of the bag by the representatives of foreign States than is available to them in respect of the diplomatic bag.

Personal Baggage

15. Under Article 36(of the Vienna Convention on Diplomatic Relations) the personal baggage of the diplomatic agent (but not other staff) and members of his family are exempt from inspection unless there are serious grounds for presuming that the baggage contains prohibited items. The problem here for the police concerns the interpretation of "serious grounds". Police would be entitled to act on specific information that a diplomat's personal baggage was likely to contain weapons or explosives, but it is unlikely that they would be able to include such baggage in exercising general precautions at times of a general threat to security eg at an airport.

Immunity from Criminal Jurisdiction

16. A diplomatic agent enjoys immunity from criminal jurisdiction under Article 31.1; similar immunity is extended to members of his family forming part of his household and administrative and technical staff, together with members of their families, by Article 37.1 and 2. There are limitations in respect of nationals and permanent residents. Members of the service staff of missions have limited immunity in respect of acts performed in the course of their duties by Article 37.3. Consular officers have similar limited immunity under Article 43 of the Consular Relations Convention.

17. In practice immunity from criminal jurisdiction is most frequently invoked in relation to traffic offences and in particular illegal parking where the provisions of the Convention prevent prosecution or the enforcement of fees payable.

18. An additional element in road traffic matters is that Article 22.3 provides that the means of transport of a mission shall be immune from search, requisition, attachment or execution and such immunity is extended to the private transport of diplomatic agents, administrative and technical staff and their families by Articles 30 and 37.2. Again the scope of the benefit is qualified for nationals and permanent residents.

19. The immunity from criminal jurisdiction under Articles 31 and 37 precludes in our view action against diplomatic vehicles which is penal in intent and effect. The removal of vehicles which are causing an obstruction is permitted but not wheelclamping.

20. Immunity from jurisdiction may be waived by the sending State (not by the entitled person) under Article 32.1, but the waiver must always be express. This means that the agreement of the sending State has to be obtained specifically for each stage of the criminal process, eg the interview by the police and the taking of statements, trial and the serving of any sentence. It is the usual practice to seek to ensure that the terms of the initial waiver cover all stages.

21. Although waivers have been successfully sought in a few serious cases, this is rarely a practical course since the agreement of the sending State is unlikely to be forthcoming and, if forthcoming, can only be obtained after a delay while the request is made through the diplomatic channel. This means that, for example when evidence of identity remains to be established or when there are time limits for the commencement of proceedings, the delay can prejudice the chance of a successful prosecution.

22. Under Article 31.4 immunity from jurisdiction does not exempt an entitled person from the jurisdiction of the sending State. States have sometimes agreed, when refusing to waive immunity, to consider prosecution on receipt of the available evidence.

23. While it is unusual for immunity to be waived or for a sending State to assume jurisdiction, on the basis of the seriousness of an offence and the strength of the evidence, the Foreign and Commonwealth Office may take a range of actions which can result in the recall of the diplomat or a warning that such action will be taken if further infringement of the law is reported. Since cases have not been proved in the courts the problem is to ensure that the evidence is sound and cannot be discredited. However, unless possible witnesses are identified at the scene of the alleged offence and statements are available, it is often the case that evidence is deficient. This is particularly true in drink/drive cases when the normal charge in the absence of immunity would be under S.6(1) of the Road Traffic Act 1972 for driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit; but as an entitled person can be breath-tested only with his head of mission's consent, there is insufficient evidence for strong action unless there is corroborated evidence of driving when under the influence of drink contrary to S.5(1) of the 1972 Act.

24. In all cases in which it can reasonably be assumed that, in the absence of immunity, proceedings would have been instituted, the Home Office's practice is to provide the Foreign and Commonwealth Office with the best available evidence.

Question (b) What are the institutional arrangements for coordination between the Home Office and the Foreign and Commonwealth Office in this area and are any changes envisaged following the events in St James's Square?

25. So far as any abuse of the Vienna Convention is concerned, there is regular and constant exchange of information between relevant officials of the Home Office and the Foreign and Commonwealth Office both on general matters and specific incidents. The police are under instruction to report to the Home Office the facts of any case where it has been established that a person who has been reported for an offence is entitled to immunity. The Home Office considers such reports and will consult with the police about the sufficiency of the evidence with a view to ensuring that a case is presented in its entirety. The Home Office must also be satisfied that, in the absence of immunity, criminal proceedings would have been instituted. The Home Office will then transmit the evidence to the Foreign and Commonwealth Office for appropriate action to be taken; in a serious case action can take the form of a request for a waiver of immunity or for withdrawal. There is close consultation between the Home Office and Foreign and Commonwealth officials on the action to be taken on any case. Arrangements for swift contact out of office hours exist through the system of Home Office duty officers and FCO Resident Clerks, who are able in emergencies to contact appropriate officials at their homes. These arrangements are kept under close review and are examined carefully in the light of particular incidents such as that in St James's Square.

ANNEX I

TXP 080/1

22-1-80

The Vice Marshal of the Diplomatic Corps presents his compliments to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London and has the honour to refer to the declaration issued on 20 March 1979 by the Foreign Ministers of the Nine Countries of the European Community about the import, acquisition, possession and use of firearms by persons enjoying diplomatic or consular privileges.

2. The declaration reads as follows:

> "The Foreign Ministers of the Nine Countries of the Community, recalling the declarations of the different international bodies which they have signed, have taken note of the progress made in the fight against terrorism.
>
> In the course of their work together, the Foreign Ministers of the Nine have observed a degree of concern reflected by public opinion about abuses of diplomatic and consular privileges and immunities.
>
> While drawing attention to the Vienna Conventions on Diplomatic and Consular Relations, and in particular their respective Articles 41 and 55, the Foreign Ministers of the Nine take this opportunity to reiterate solemnly that, without prejudice to their privileges and immunities, persons who enjoy such privileges and immunities are obliged to respect the laws and regulations of the States to which they are accredited and consequently those concerning the import, acquisition, possession and use of firearms.
>
> Furthermore, they emphasise that the diplomatic or consular bag may be used only for carrying objects or documents intended solely for official use by diplomatic or consular missions."

3. In the light of that declaration, it seems opportune to remind Diplomatic Missions and International Organisations in London of the regulations in this country relating to the possession and acquisition of firearms by

such missions or organisations or by individual members of their staffs. These regulations were set out in a circular note to the Diplomatic Corps of 19 July 1976, a copy of which is attached for ease of reference.

4. Nothing in these regulations has been changed but various administrative measures have been taken to ensure even closer control. If firearms and ammunition are imported (eg by a new member of the staff coming from an overseas post where their possession was permitted) the owner should declare them to a United Kingdom Customs and Excise officer at the place of importation. Firearms or ammunition of a type for which a firearm certificate is required will be retained by Customs and Excise until a valid firearm certificate, police permit or letter of authority issued by a chief officer of police has been produced. If a firearm certificate is not granted for the possession of the weapon or ammunition the member may make arrangements with Customs and Excise for them to be re-exported. A shot gun certificate must be obtained if the member stays in Great Britain for more than an average of 30 days in any one year.

5. The summary of the law as given above and in the circular note annexed is not intended to be a comprehensive account; any enquiries on the matter should be referred to the Privileges Section of Protocol and Conference Department (233 3426 or 233 3017).

6. The Vice-Marshal of the Diplomatic Corps avails himself of this opportunity to renew to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London the assurance of his highest consideration.

FOREIGN AND COMMONWEALTH OFFICE

22 January 1980

TXP 404/2

The Head of Protocol and Conference Department of the Foreign and Commonwealth Office presents his compliments to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London and has the honour to state that the regulations relating to the possession and acquisition of firearms by members of Missions and Organisations in London, which are at present set out in paragraph 26 of the Foreign and Commonwealth Office Memorandum on Diplomatic Privileges and Immunities have been reviewed. (A copy of that paragraph is attached for ease of reference). Following this review, the regulations in this respect have been revised as follows:-

> All members of a mission are required to comply with the provisions of the Firearms Act 1968 by obtaining:-
>
> (a) a firearm certificate in respect of any type of firearm and ammunition except smooth bore sporting guns ("shot guns"), shot gun ammunition referred to in (b) below, and air weapons (as defined in the Act);
>
> (b) a shot gun certificate in respect of a shot gun with a barrel not less than 24 inches in length, (a certificate is not required for shot gun ammunition);

which they possess or intend to acquire. Firearms or ammunition imported by members of a mission should be declared and produced to the Customs Officer at importation. In general those firearms and ammunition to which sub-paragraph (a) above refers will be detained by Customs until a valid firearm certificate has been produced. Certificates in respect of shot guns imported into Great Britain do not need to be produced at the port of arrival, but must be obtained if the member of the mission stays in Great Britain for more than 30 days in any year.

It should be noted that firearm certificates will not be granted in respect of weapons which are intended for protection purposes.

Applications for both firearm and shot gun certificates may be made to any police station in the area where the applicant resides, and the application should specify any ammunition imported or which it is intended to acquire in the United Kingdom. Payment of the fee chargeable is waived on the issue of such certificates to

> diplomatic agents and administrative and technical staff of diplomatic missions.

Any queries about this matter should be referred to the Privileges Section of Protocol and Conference Department (233 3426 or 233 3017).

The Head of Protocol and Conference Department of the Foreign and Commonwealth Office avails himself of this opportunity to renew to

Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London the assurance of his highest consideration.

FOREIGN AND COMMONWEALTH OFFICE
19 July 1976

Reference________________

Firearms (including shotguns)

26. All members of a mission are expected to comply with the requirements of the Firearms Act, 1968, by obtaining:

(*a*) Firearm Certificates in respect of any arms and ammunition (apart from smooth bore sporting guns with a barrel not less than 24 inches in length);

(*b*) Shotgun Certificates in respect of smooth bore sporting guns with a barrel not less than 24 inches in length:

which they possess or intend to acquire by purchase or importation.

Applications for both types of certificate may be made to any police station in the Metropolitan Police district. Payment of the fee chargeable is waived on the issue of such certificates to diplomatic agents and administrative and technical staff.

TXP 080/1 9-5-80

The Vice Marshal of the Diplomatic Corps presents his compliments to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London and has the honour to refer to his circular note of 22 January 1980 about the import, acquisition, possession and use of firearms by persons enjoying diplomatic or consular privileges. In the light of recent serious terrorist incidents in London it seems important to underline the regulations in this country relating to this matter and to emphasise the grave view which will be taken by the United Kingdom authorities of any deliberate breach of these regulations.

As was stated in the circular note to the Diplomatic Corps of 19 July 1976 (a copy of which was attached, for ease of reference, to the circular note of 22 January 1980) no firearm certificate will be granted by the police in respect of weapons intended for protection purposes. The United Kingdom authorities will carry out their international responsibilities for protecting missions and organisations and their staffs.

It follows from what is stated above that firearms can only legitimately be in the possession of missions or organisations or individual members of their staffs if held or acquired in accordance with the law in Great Britain, the main relevant provisions of which were summarised in the circular note of 19 July 1976. The ban on the possession of weapons, other than those authorised for genuine sporting purposes, is in line with the general practice in Great Britain. It must be emphasised that no distinction is drawn between firearms held by individual members of staff and those which a mission or organisation might claim to hold officially. Nor is there any concession to Service Attachés in respect of personal weapons. If, therefore, any diplomatic mission or international organisation or members of their staffs possess weapons for which firearm or shotgun certificates have not been issued, Privileges Section of Protocol and Conference Department of the Foreign and Commonwealth Office should be informed as soon as possible in order that the matter can be regularised.

Any enquiries on this or any other aspect of this circular should be addressed to that Section (233 3817 or 233 3017).

It will be obvious from the foregoing that the United Kingdom authorities would take a grave view if firearms were found either to be unlawfully in the possession of either a Diplomatic Mission or International Organisation or individual members of its staff or to have been passed by them to other persons in the United Kingdom.

The Vice Marshal of the Diplomatic Corps avails himself of this opportunity to renew to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London the assurance of his highest consideration.

FOREIGN AND COMMONWEALTH OFFICE
9 May 1980

ANNEX A

NOTE DATED 12 JUNE 1980

Her Britannic Majesty's Embassy have the honour to thank the Foreign Liaison Bureau of the Libyan Arab Jamahiriya for their notes of October 1979 and 8 April 1980 about relations between the United Kingdom and the Socialist People's Libyan Arab Jamahiriya.

HMG welcome the assurance that the Socialist People's Libyan Arab Jamahiriya will continue to accord to the British Embassy all the usual facilities for the performance of its functions: they understand by this that the provisions of the Vienna Convention on diplomatic relations will continue to regulate questions of diplomatic privileges and immunities and other matters concerning the Embassy and its staff.

HMG agree that the Libyan People's Bureau in the United Kingdom should likewise be accorded diplomatic facilities. To meet this requirement HMG will regard the People's Bureau as a diplomatic mission so that they may accord to it the facilities, privileges and immunities provided by the Vienna Convention. For legal and administrative purposes it will be necessary for one person to be designated as being in charge of the mission: they note that Mr Musa Kusa is the Secretary of the People's Committee and they will therefore regard him as Head of Mission (Charge d'Affaires ad interim) with effect from the date of this note. The other two members of the People's Committee will also be accorded diplomatic privileges and immunities from the same date. Privileges and immunities of the appropriate category will also be accorded to other members of the staff when they are notified by Mr. Musa Kusa in the normal manner.

In keeping with the wishes of the Socialist Peoples Libyan Arab Jamahiriya, the Mission will be referred to as the Peoples Bureau of the Socialist Peoples Arab Jamahiriya.

ANNEX B

FOREIGN AND COMMONWEALTH OFFICE
LONDON SW1

27 JANUARY 1969

Your Excellency,

Persons permanently resident in the United Kingdom employed in Foreign and Commonwealth Diplomatic Missions

In my circular Note No TP 30015/52 of the 19th of August 1965 I explained, for the general guidance of Heads of Mission, that Her Majesty's Government regard all locally engaged staff, irrespective of nationality, as permanent residents of the United Kingdom and would treat them accordingly for the administrative purposes of the Diplomatic Privileges Act, unless the Heads of Mission concerned called attention in any case to special factors suggesting that an individual was only temporarily resident in the United Kingdom and had the intention to return to his own country or to proceed to a third State.

2. It has become apparent, however, that difficulties are still being experienced in deciding whether certain other individuals should be classed as permanent residents of the United Kingdom. I believe therefore that it would be of assistance to Heads of Diplomatic Missions if I were to issue some further guidance and to set out certain priciples on this subject which have been formulated by Her Majesty's Government in the light of greater experience of the administration of the Diplomatic Privileges Act.

3. When determining whether or not a particular member of your staff should be regarded as a permanent resident of the United Kingdom the test should normally be whether or not he would be in the United Kingdom but for the requirements of the sending State. In applying this test, I suggest that you should be guided by the following considerations:-

(i) the intention of the individual: a person should be regarded as permanently resident in the United Kingdom unless he is going to return to his own country or proceed to a third country as soon as his appointment in the

United Kingdom ends. It is suggested that points which may be relevant to this question include the links of the individual with the State which he claims as his home, eg payment of taxes, participation in social security schemes, ownership of immovable property, payment of return passage by the sending State.

(ii) the prospect of the individual being posted elsewhere as a career member of the service: he should be regarded as permanently resident in the United Kingdom if his appointment in the United Kingdom is likely to continue or has continued for more than five years, unless the Head of Mission states that the longer stay in the United Kingdom is a requirement of the sending State and not a result of personal considerations.

(iii) local recruitment of the individual: a person who is locally engaged is presumed to be permanently resident in the United Kingdom unless the Head of Mission concerned shows that he is going to return to his own country immediately on the termination of his appointment in the United Kingdom; and

(iv) marital status of the individual: a woman member of the Mission who is married to a permanent resident of the United Kingdom is presumed to be herself permanently resident in the United Kingdom from the time of her marriage unless the Head of Mission shows that in addition to her satisfying the other criteria, there remains a real prospect in view of the special circumstances of her case that she will be posted as a normal career member of the service.

4. If a review in the light of this guidance leads Your Excellency to conclude that any of your staff should henceforward be regarded as permanent residents of the United Kingdom for the purposes of the Diplomatic Privileges Act, I suggest that any change in status should take effect from 1st April 1969 and would request that such cases be notified to this office by that date. Thereafter it would be helpful if Your Excellency could arrange for prompt

notification to this Office of any change in the residential status of members of your staff. Should a difference of opinion arise between a Mission and Her Majesty's Government as to whether an individual is permanently resident in the United Kingdom, I suggest that consultation should take place between the two sides and that each side should inform the other of any relevant evidence which may be in their possession.

5. I should be grateful if Your Excellency would bear in mind the considerations set forth above when making notifications of staff for the purposes of establishing and maintaining the régime of immunities and privileges to be set up for foreign consular personnel under the Consular Relations Act 1968 and for Commonwealth quasi-consular personnel under the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952 as amended by the Consular Relations Act 1968).

6. I should add that if any member of the staff of a diplomatic Mission wishes to settle permanently in the United Kingdom on the termination of his employment with that Mission it will, of course, be necessary for him to obtain the permission of the appropriate authorities for this purpose in accordance with the ordinary laws and regulations of the United Kingdom.

I have the honour to be,
with the highest consideration,
Your Excellency's obedient Servant.

MICHAEL STEWART

ANNEX C

DIPLOMATIC IMMUNITIES AND PRIVILEGES

Number of occasions on which persons entitled to diplomatic immunity have escaped arrest or prosecution; 1974-1984

Sexual Offences Act 1956	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Sec 1 (Rape)				1			1				
Sec 10 (Incest)						1				1	
Sec 13 (Gross Indecency)	1	1	1	1			1		1	2	
(Attempted gross indecency)						1					
Sec 14 (Indecent assault)				1		1					1
TOTAL	1	1	1	3		3	2		1	3	1

TOTAL = 16

Firearms Act 1968	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Sec 1 (Unlawful possession of a firearm)	2			1			1		1		

TOTAL = 5

Offences involving violence	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Offences against the Person Act 1861:											
Sec 20 (inflicting grievous bodily harm)										1	
Sec 42 (assault)		1	1	2		3		2	3	1	
Sec 47 (assault occasioning actual bodily harm)				3				1		1	
Police Act 1964:											
Sec 51(1)(assault of a police officer)		2	2	2	1	1	1	1	2	2	
Prevention of Crime Act 1953:											
Sec 1 (carrying an offensive weapon)	1					1		1			
TOTAL	1	3	3	7	1	5	1	5	5	5	

TOTAL = 36

Road Traffic Act 1972	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Sec 1 (death by reckless driving)	1		2								
Sec 2 (reckless driving)					1	5				3	
Sec 5 (driving under influence of drink/drugs)	18	15	13	18	27	13	25	17	19	30	10
TOTAL	19	26	15	18	28	18	25	17	19	33	10

TOTAL = 228

ANNEX D

DIPLOMATIC IMMUNITIES AND PRIVILEGES

1. Total alleged offences against the Road Traffic Act 1972

1974	217
1975	229
1976	225
1977	246
1978	283
1979	228
1980	197
1981	170
1982	156
1983	190
1984 (to date)	34

2. Number of fixed penalty notices cancelled on grounds of diplomatic immunity

1974	52,839
1975	36,504*
1976	92,985
1977	94,534
1978	78,755
1979	52,450
1980	51,068
1981	68,940
1982	76,232
1983	102,210

*Figures not available for the period June to September 1975

7-1-82

The Vice Marshal of the Diplomatic Corps presents his compliments to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London and has the honour to draw their attention once again to the regulations concerning the import, acquisition, possession and use of firearms by persons enjoying diplomatic and consular privileges. These regulations also apply to the possession of firearms by the bodyguards of visitors to the United Kingdom or by the visitors themselves. In the light of recent serious terrorist incidents in London it is opportune to underline the regulations in this country relating to this matter and to emphasize the grave view which will be taken by the United Kingdom authorities of any deliberate breach of these regulations.

It must be stressed that firearms can only legitimately be in the possession of Missions or Organisations or individual members of their staffs or in the possession of bodyguards of visitors to the United Kingdom or of the visitors themselves if held or acquired in accordance with the law in Great Britain, the main relevant provisions of which are summarised in the Circular Note of 19 July 1976, a copy of which is attached. (This is not intended to be a comprehensive account of the law and any enquiries on this matter should be referred to the Privileges Section of Protocol and Conference Department).

No firearm certificate will be granted by the police in respect of weapons intended for protection purposes. The United Kingdom authorities will carry out their international responsibility for protecting Missions and Organisations, their staffs and visitors. Firearms in the possession of bodyguards should be declared to HM Customs and Excise at the port of arrival. Such arms will be returned to them upon their departure from the United Kingdom.

The Vice Marshal of the Diplomatic Corps avails himself of this opportunity to renew to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London the assurance of his highest consideration.

FOREIGN AND COMMONWEALTH OFFICE

7 January 1982

TXP 4C4/2

Head of Protocol and Conference Department of the Foreign and Commonwealth Office presents his compliments to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London and has the honour to state that the regulations relating to the possession and acquisition of firearms by members of Missions and Organisations in London, which are at present set out in paragraph 26 of the Foreign and Commonwealth Office Memorandum on Diplomatic Privileges and Immunities have been reviewed. (A copy of that paragraph is attached for ease of reference). Following this review, the regulations in this respect have been revised as follows:-

> All members of a mission are required to comply with the provisions of the Firearms Act 1968 by obtaining:-
>
> (a) a firearm certificate in respect of any type of firearm and ammunition except smooth bore sporting guns ('shot guns'), shot gun ammunition referred to in (b) below, and air weapons (as defined in the Act);
>
> (b) a shot gun certificate in respect of a shot gun with a barrel not less than 24 inches in length, (a certificate is not required for shot gun ammunition):

which they possess or intend to acquire. Firearms or ammunition imported by members of a mission should be declared and produced to the Customs Officer at importation. In general those firearms and ammunition to which sub-paragraph (a) above refers will be detained by Customs until a valid firearm certificate has been produced. Certificates in respect of shot guns imported into Great Britain do not need to be produced at the port of arrival, but must be obtained if the member of the mission stays in Great Britain for more than 30 days in any year.

It should be noted that firearm certificates will not be granted in respect of weapons which are intended for protection purposes.

Applications for both firearms and shot gun certificates may be made to any police station in the area where the applicant resides, and the application should specify any ammunition imported or which it is intended to acquire in the United Kingdom. Payment of the fee chargeable is waived on the issue of such certificates to diplomatic agents and administrative and technical staff of diplomatic missions.

Any queries about this matter should be referred to the Privileges Section of Protocol and Conference Department (233-3426 or 233-3017).

The Head of Protocol and Conference Department of the Foreign and Commonwealth Office avails himself of this opportunity to renew to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London the assurances of his highest consideration.

FOREIGN AND COMMONWEALTH OFFICE

19 July 1976

Firearms (including shotguns)

26. All members of a mission are expected to comply with the requirements of the Firearms Act, 1968, by obtaining:

(a) Firearm Certificates in respect of any arms and ammunition (apart from smooth bore sporting guns with a barrel not less than 24 inches in length);

(b) Shotgun Certificates in respect of smooth bore sporting guns with a barrel not less than 24 inches in length;

which they possess or intend to acquire by purchase or importation.

Applications for both types of certificate may be made to any police station in the Metropolitan Police district. Payment of the fee chargeable is waived on the issue of such certificates to diplomatic agents and administrative and technical staff.

4-6-84

The Vice Marshal of the Diplomatic Corps presents his compliments to Their Excellencies and Messieurs the Heads and Acting Heads of Diplomatic Missions and International Organisations in London and has the honour to draw their attention to the regulations concerning the import, acquisition, possession and use of firearms in the United Kingdom.

Previous circulars on this subject were sent to the Diplomatic Corps on 19 July 1976, 22 January 1980, 9 May 1980 and 7 January 1982. Recent events in London have underlined the need to ensure that the Diplomatic Corps is reminded of these regulations and the grave view which would be taken by the United Kingdom authorities of any breach of them. In future such a breach would normally result in a request for the withdrawal of the offender from the staff of the mission or organisation.

Responsibility for protection of Missions and Organisations, their staff, as well as their visitors, rests with the United Kingdom authorities. It is emphasised that in no circumstances will Firearms Certificates be granted either to Diplomatic Missions for weapons for use by security staff or to individuals for weapons which are intended for personal protection. It is against the law for arms to be held without the appropriate certificate. Any weapons carried by, or on behalf of, visitors should be declared to HM Customs and Excise at the port of arrival and deposited with them for safe keeping. They will be returned to visitors upon their departure from the United Kingdom.

The relevant provisions of the current regulations governing the issue of Firearms Certificates for sporting purposes are set out in the attached Revision of paragraph 26 of the Foreign and Commonwealth Office Memorandum on Diplomatic Privileges and Immunities.

The Vice Marshal of the Diplomatic Corps avails himself of this opportunity to renew to Their Excellencies and Messieurs, the Heads and Acting Heads of Diplomatic Missions and International Organisations in London the assurance of his highest consideration.

FOREIGN AND COMMONWEALTH OFFICE
LONDON SW1

DESCRIPTION OF UK FIREARMS REGULATIONS GOVERNING ACQUISITION AND POSSESSION OF FIREARMS FOR SPORTING PURPOSES (FIREARMS ACT 1982)

Paragraph 26 of the Foreign and Commonwealth Office Memorandum on Diplomatic Privileges and Immunities has been amended as follows:-

All members of a mission are required to comply with the provisions of the Firearms Acts 1968 and 1982. A brief summary of the requirements is given below:-

(a) - a firearm certificate is required to possess, purchase or acquire firearms and ammunition, eg pistols and rifles. (Air weapons do not require a firearm certificate unless they have been designated 'specially dangerous')

(b) - a firearm certificate is required to possess, purchase or acquire certain replica (imitation) firearms which come within the provisions set out in the Firearms Act 1982 (a summary of the requirements of the Firearms Act 1982 is attached)

(c) - a shot gun certificate is required to purchase, possess or acquire a shot gun (a shot gun is defined as a smooth-bore gun with a barrel not less than 24'' in length, which is not an air gun). A shot gun certificate is not required for ordinary shot gun cartridges but other types of shot gun ammunition, eg all single bulleted ammunition is subject to control.

Applications for both types of certificates and any enquiries about firearms matters should be made to A4, Firearms Branch, The Metropolitan Police, New Scotland Yard, Broadway, London SW1H 0BG (tel (for firearms) 01-230 2507; (for shot guns) 01-230 2638). Payment of the fee chargeable is waived on the issue of such certificates to diplomatic agents and administrative and technical staff.

Firearms or ammunition imported by members of a mission must be declared and produced to the Customs Officer at the time of importation. In general these firearms and ammunition under sub-paragraph (a) above will be detained by Customs until a valid firearm certificate has been produced.

Requests for both firearms and shot gun certificates may be made in the first instance to the Privileges Section, Protocol Department, who will supply the necessary application forms. All applications must specify any ammunition imported or which is intended to be acquired in the United Kingdom.

The foregoing is not intended to be a comprehensive account of the law and any enquiries about this matter should be referred to the Privileges Section of Protocol Department (telephone 273 3532/5).

FIREARMS ACT 1982

The Firearms Act 1982 extends the provisions of section 1 of the Firearms Act 1968 to certain imitation firearms. Thus, a person commits an offence, if, without holding a valid firearm certificate or otherwise than as authorised by such a certificate has in his possession, or purchases or acquires an imitation firearm which:

a. has the appearance of being a firearm to which section 1 of the 1968 Act applies; and

b. is so constructed or adapted as to be readily convertible into a firearm to which that section applies.

Under section 1(b) of the 1982 Act an imitation firearm shall be regarded as readily convertible into a firearm to which section 1 of the 1968 Act applies if:

a. it can be so converted without any special skill on the part of the person converting it in the construction or adaptation of firearms of any description; and

b. the work involved in converting it does not require equipment or tools other than such as are in common use by persons carrying out works of construction on maintenance in their own homes.

STATEMENT BY THE RT HON SIR GEOFFREY HOWE QC MP TO THE HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE: 18 JULY 1984

INTERNATIONAL TERRORISM AND THE VIENNA CONVENTION

My appearance before you today provides a useful opportunity for me to discuss with you the question of international terrorism and the abuse of diplomatic immunity. The Libyan and Nigerian affairs have created great disquiet in this country. Your own work will have shown you that this is not only a serious, but a complex subject. There are no across the board solutions. I particularly want to identify some of the problems which I find most difficult and on which I would welcome your advice in due course.

International Terrorism

I should like first to say a word about the relationship between diplomatic immunity and the wider problem of international terrorism.

Diplomatic immunity does not stand by itself or exist for its own sake. It is part of the system by which governments conduct their relations with one another. It is an essential instrument in safeguarding the livelihood as well as the physical safety of British citizens, as well as Britain's economic interests, overseas.

Abuse of diplomatic immunity can arise in quite ordinary day-to-day circumstances or it can be part of the broader problem of international terrorism. There are two aspects of this:

> First, some foreign nationals to whom this country has given hospitality have taken to pursuing on our soil conflicts which have little to do with the

policies of the British Government or the activities of British citizens;

Second, more recently, a small minority of governments have used their diplomatic missions abroad to support and foster terrorism.

Under the law of this country, the fact that the intended victim may be a foreigner does not alter the seriousness of the offence. Foreigners resident in this country are entitled to the protection of our laws in the same way as British citizens. In the same way the existence of diplomatic immunity certainly does not confer on a foreigner the right either to break the law of this country or to put at risk the lives or property of British citizens or of visitors to this country. This is plainly stated in Article 41(1) of the Vienna Convention, which requires diplomats to "respect the laws and regulations of the receiving state".

But in cases where diplomatic immunity is claimed, those principles cannot be upheld by the courts of the host country.

That brings me to what is probably the most important point. The justification for that exceptional privilege has to be considered in the context of the absolutely crucial concept of reciprocity.

If British diplomats are to enjoy immunity overseas, then it is necessary to accord matching rights to foreign diplomats in this country. And it is vitally important for our diplomats to enjoy that immunity for the sake of British interests and for the safety of non-diplomatic British subjects.

Britain has widespread interests overseas. Britain's overseas trade amounts to some £120 billion per year.

Britain's overseas investment are worth more than £44 billion. To conduct that trade and to manage those investments a very large number of British citizens and their families - running into millions - are living abroad at any one time. The 3,600 British diplomats and other civil servants who are working abroad as accredited representatives of this country, are there to further British trading and other interests, and to protect the safety of the British communities abroad.

And the more unpredictable, and even lawless, the actions of a foreign government, the more difficult is the life of those who live and work under its jurisdiction. It is in just such countries and just such conditions that they most need the protection of Her Majesty's representatives abroad. It is in just such cases that they in their turn most need immunity from unwarranted action by the receiving government.

It is an unpalatable fact that some governments are only too ready to bring trumped up charges against entirely innocent British citizens, quite unconnected with diplomatic immunity, and in some cases even to detain them indefinitely without charge. And it is just those governments which are most likely either to permit the abuse of immunity or themselves to exploit it, and who would be unwilling to allow their representatives to be subjected to the rule of law in this country. And it is just those governments which are likely to have the fewest scruples about taking unwarranted retaliatory action.

In considering the question of reciprocity, which is of such central importance, it is vital to keep in mind the possibility of retaliatory action, however baseless and illegal it may be. We have to consider these questions on the basis of worst case assumptions.

But that should not, of course, prevent us taking action where action is justifiable, necessary and likely to have the desired result. In certain cases, it is inevitable that there will be a deterioration or disruption in official relations with a foreign government. That will often be accompanied or followed by the loss of trade and other commercial opportunities. Where it is necessary to consider such action, it is vital to minimise the risk to the personal safety of Britons abroad as well as to our material interests. When considering action in any particular case, it would be the height of folly not to make the most careful assessment of the implications for the full range of Britain's interests.

Action in the United Kingdom

May I now say a word about the position in this country and, in particular, about some of the actions which we are able and should be ready to take under our existing powers. It is perhaps worth recording that the number of accredited diplomats in London (including the second category of administrative and technical staff) is now some 5,000 plus about 10,000 dependents. That number is exceeded in few other cities. It should rightly be seen as a mark of London's continuing importance.

Against that background, let me also make it plain that only a very small minority in the London Diplomatic Corps abuse their status. I am sure that we have the support of the great majority in trying to put an end to such abuse.

On abuses of immunity by individual diplomats, we have, as you know, in the past declared a number of diplomats _persona non grata_. This remains a proper sanction against certain very serious forms of misconduct, usually involving threats to national security. We shall continue to use this power in appropriate cases.

Other serious offences not involving threats to national security have been treated differently. Over the last two and a half years for which matching figures are available, there were 123 such alleged offences. As a consequence 24 diplomats were withdrawn at our request.

One must be concerned about these figures. But they do need to be put in perspective.

First, they refer to alleged offences. None of the alleged offenders were brought to trial. If they had been, some would almost certainly have been acquitted.

Second, the definition of 'serious' offences offered by the Home Office in this context refers to any offence for which the maximum possible penalty is six months or more imprisonment. A study of the normal pattern of such cases in this country suggests that only a minority would have led to a custodial sentence. Over the last 10 years, 40 per cent of these alleged serious offences concerned shoplifting, some by children of diplomats. Another 40 per cent involved alleged drunken driving. In these two categories it has not been our practice to request the removal of a first time offender, unless there has been aggravation, such as assault on the police or injury to a third party. A second incident involving alleged drunken driving does lead to a request for removal. Such requests have, without exception, been met.

It is, of course, necessary to consider such matters case by case, rather than by reference to any inflexible rule. But I have decided that it would be right in future to expect and to apply more stringent standards. The London Diplomatic Corps is accordingly being advised by a formal notice of the standards of behaviour that are expected of them in this respect.

Publicity Concerning Misconduct

I know that there is some feeling that the Government should identify the missions to which individuals alleged to have abused their immunity belong. In some cases the country of origin of a diplomat accused of improper conduct has been published. In the case of incidents, such as those recently involving Libya and Nigeria, publicity is axiomatic. There may in the future be other circumstances in which publicity would have an exemplary or deterrent effect.

But at this stage I do see real difficulty about making this information public as a matter of course in every case. In the first place, the guilt of alleged offenders will not have been established in court. Secondly, there is no doubt in my mind that in current circumstances publicity in certain cases could, however perversely, risk danger to the safety of British subjects or serious damage to British interests in the country concerned. Our aim must be to change that state of affairs. But we shall not accomplish that overnight. So here too I believe it is and will remain essential to consider each such question case by case.

Size of Missions

Now a word about the size of missions. We have, of course, the power to limit the size of missions in this country. And we have exercised this power, for example, in relation to the Soviet Union. We use it in a few other instances. It follows, of course, that in such cases it is open to us to reduce the ceiling if a member of staff of the mission concerned is expelled. And in some cases we have exercised that power.

But here, too, we need always to have in mind the reciprocal implications for our own missions abroad. This again underlines the importance of proceeding case by case.

Diplomatic Bags

The last matter of substance on which I should like to say something is the diplomatic bag. As the Committee well knows, the Vienna Convention states that "the Diplomatic Bag shall not be opened or detained". In our view, this does not prevent the scanning of bags electronically, although this interpretation is not universally accepted. But, because contents - even guns - can be disguised by a determined government, we shall not be able to establish beyond reasonable doubt by scanning what the contents of a particular bag are. Scanning might sometimes tell us that there is a problem. But it would not solve it.

One possible solution would be to seek an amendment of the Convention, so that where there was evidence of improper contents, the sending government could be asked to allow the bag to be opened in the presence of one of their representatives. In the event of refusal, the suspect bag could then be refused entry.

There is one very substantial difficulty about this proposal. One can be certain - and I mean certain - that in the case of those governments most prone to use bags to make illegal imports, reciprocal action would be applied to British diplomatic bags reaching their ports, regardless of the fact that there is no good cause. This could gravely jeopardise the security of our own confidential information and even more important our capacity to maintain a secure communications system. This would be most likely to happen in countries where we could least afford it. The prejudice to the national interest could be severe and, in extreme cases, the safety of individuals could be involved.

This is an exceptionally difficult problem. After, having discussed this matter already with a number of other foreign ministers, I am frankly doubtful if we could secure international agreement for an amendment to the Vienna Convention relating to diplomatic bags. Moreover, in the light of the considerations I have just set out, I am far from sure that such an amendment would even be in our national interest. We shall continue to pursue this point with friendly governments. If we find we cannot eliminate abuse, we need practical cooperation to limit it as much as possible.

International Cooperation

As you know, we have taken the lead on all these questions in a number of different international groupings. I refer specifically to the Council of Europe, the European Community and the world Economic Summit. There is agreement about the seriousness of the problem and an encouraging willingness to consider the scope for joint action. I will not take up the time of the Committee with the details, but will let you have a separate note on this.

I shall now be glad to try to answer your questions.

FCO/FAC/12/84

SELECT COMMITTEE ON FOREIGN AFFAIRS
Memorandum by the Foreign and Commonwealth Office
DIPLOMATIC IMMUNITIES AND PRIVILEGES

INTRODUCTION

1. Diplomatic immunity is not a new concept. The principle of the inviolability of the envoy both in peace time and between peoples at war goes back some 3,000 years. The Vienna Convention did not create new law; indeed its implementation in the United Kingdom by the Diplomatic Privileges Act 1964 replaced the Diplomatic Privileges Act of 1708 which had given wider immunities and privileges. The very long stability of the rules of law being codified was one of the two factors upon which the success of the Vienna Convention depended. The other factor was reciprocity. Every state is both a sending and a receiving state; its own representatives abroad are hostages and even on minor matters their treatment will depend on what the sending state itself accords.

2. The growth in the size of the Diplomatic Corps in London has brought about increasing friction between the Corps and the rest of the population, mainly over such matters as parking and motoring offences. There is also some resentment at the privileges enjoyed by diplomats, such as duty-free spirits. Diplomats - both foreign in this country and British overseas - have become a fashionable target for the national press. This seems to be a peculiarly British attitude; in other countries public and Parliamentary opinion is not so exercised by, or interested in, diplomatic immunity and privileges. The United Kingdom is consistently isolated in international fora and indeed attacked for its attitude of resistance towards expansion of immunity in regard to international organisations and their staff. It has become clear in recent bilateral contacts that few, if any, foreign governments are likely to support any serious move made by the United Kingdom towards restrictive amendment of the Vienna Convention.

3. In any consideration of the Vienna Convention, two points need to be borne in mind. Firstly, most of the 5,000 or so diplomats serving in this country and their families are law-abiding and do not use their immunity to flout UK laws and regulations in any way. The abuses which any revision of the Vienna Convention would be

intended to correct are committed by only a very small minority of diplomats. Secondly, any suggestion that the immunities conferred by the Convention should be restricted should be considered in the light not only of the salutary effect which such restrictions might have on certain missions in London but also of the vulnerability of many British Embassies overseas in countries which are hostile towards us or in which the rule of law is not firmly established. Any qualifying of the present immunity enjoyed by diplomatic agents in respect both of their persons and their premises could be exploited by unfriendly states overseas.

QUESTION 1

For what reason did HMG in June 1980, agree to treat the Libyan People's Bureau as a diplomatic mission?

ANSWER

4. HMG agreed to treat the Libyan People's Bureau as a diplomatic mission, under the provisions of the Vienna Convention on Diplomatic Relations, in June 1980, after prolonged negotiations over the problems caused by this novel nomenclature. Between September 1979 and June 1980 we accepted 10 notifications of staff as entitled to diplomatic status. The conditions laid down by HMG before relations were resumed on a normal basis were clearly set out in a Diplomatic Note (text at Annex A). The US and FRG had already taken similar action, and other countries soon followed suit. It should be emphasised that the problems were at that stage merely ones of form and terminology. The People's Bureau so far as we knew was carrying out proper diplomatic functions and only proper diplomatic functions.

QUESTION 2

Apart from a Head of Mission, how many other Libyans were at that time recognised as members of the diplomatic staff of the Bureau? How did this number compare with the number of accredited diplomats in the former Libyan Embassy?

ANSWER

5.13Libyans were recognised as members of the diplomatic staff at the Bureau in June 1980. There were 35 accredited diplomats in the former Libyan Embassy.

QUESTION 3

How many of those recognised as members of the diplomatic staff of the Mission between June 1980 and February 1984 were known not to have had previous experience in the diplomatic service of the Libyan Government?

ANSWER

6. We had no knowledge as to whether they had previous diplomatic experience. Article 7 of the Convention provides that the sending State may freely appoint the members of the staff of the mission. It is not normal diplomatic practice to request a curriculum vitae in respect of new appointments to missions.

QUESTION 4

How many other Libyans were recognised between June 1980 and February 1984 as members of the administrative and technical staff of the Mission enjoying immunity from criminal jurisdiction and the other privileges and immunities specified in Articles 29 to 35 and Article 37(2)?

ANSWER

7. 57 Libyans in all were recognised between June 1980 and February 1984 as members of the administrative and technical staff of the Mission.

QUESTION 5

Did HMG at any time between June 1980 and February 1984 exercise its right under Article 11(1) to set limits on the size of the Mission?

ANSWER

8. No.

QUESTION 6

The Foreign Secretary stated in the House on 1 May that since the take-over of the Mission by the Committee of Revolutionary Students on 18 February 1984 'no member of the new Revolutionary Committee, nor any other Libyan, has been given any form of diplomatic status'. After that date, how many, if any, of the former members of the diplomatic staff of the Mission ceased to be recognised as such by HMG?

ANSWER

9. Only one. We were notified on 20 February by the Foreign Liaison Bureau in Tripoli that Mr Adem Saleh Kuwiri was no longer in charge of the Libyan People's Bureau. We therefore ceased to recognise him from that date.

QUESTION 7

The Foreign Secretary also stated on 1 May that HMG had made clear to the Libyan authorities in February that 'unless or until they took steps to establish a customary diplomatic mission, we would not be willing to deal with them on a normal basis'. In what sense was the Bureau treated differently by HMG after the February take-over? Was the Bureau still treated as 'the premises of the mission' for the purposes of Article 22? Who, if anyone, was recognised as the Head of Mission for the purposes of Article 5?

ANSWER

H.M. Ambassador in Tripoli informed the Libyan Foreign liason

Bureau on 29 February that we needed confirmation of the name of the new Head of the Bureau in accordance with Article 19 of the Vienna Convention on Diplomatic Relations; that until the position of who was in charge of the mission was regularised, we would be unable to accept new notifications of appointments; and that it would therefore become progressively more difficult to conduct business with the Bureau. The Bureau continued to be treated as 'the premises of the mission' since we had no indication that it was not being 'used for the purposes of the mission'. Article 1(i) defines the 'premises of the mission' as 'the buildings or parts of buildings and the land ancillary there to, irrespective of ownership, used for the purposes of the mission including the residence of the head of mission'. Nobody was recognized as the head of the Mission.

QUESTION 8

How many Libyan diplomats were declared persona non grata between June 1980 and April 1984 and what were the circumstances in each case?

ANSWER

11. Only one. On 13 June 1980 The Lord Privy Seal told Mr Musa Kusa, then head of the Libyan People's Bureau in London, that his presence in this country was no longer in the interests of Anglo Libyan relations and asked him to leave. This followed a statement by Mr Musa Kusa to The Times that he approved a decision by 'Revolutionary Committees' to kill two people in the United Kingdom.

QUESTION 9

12. How many British diplomats were declared persona non grata by the Libyan authorities during the same period, and what were the circumstances in each case?

ANSWER

None.

QUESTION 10

On accession to the 1961 Vienna Convention, the Libyan Arab Jamahiriya reserved its right to request the opening of diplomatic bags or, if such request was refused, to return such bags to the sending country. Has HMG on any occasion received or complied with such a request from the Libyan authorities?

ANSWER

13. No. The Libyan Arab Jamahiriya has not requested the opening of any British diplomatic bags.

QUESTION 11

For what reason did HMG not register a formal objection - or, alternatively, enter a similar reservation - in respect of the Libyan reservation referred to above? Did HMG's failure to object indicate its recognition of the possibility of reciprocal discrimination against the Libyan diplomatic bag under Article 47(2)(a)?

ANSWER

14. Her Majesty's Government gave careful consideration to the possibility of objecting to a reservation in the terms of the Libyan one when such a reservation was first lodged by Kuwait in 1969. The view was then taken that a reservation in those terms was not incompatible with the object and purpose of the Vienna Convention on Diplomatic Relations. In forming such a view the Government took into consideration that the terms of the reservation reflected customary international law as it was before the Vienna Convention and the fact that at the Vienna Conference which drew up the Convention the UK had re-introduced an amendment to Article 27, which, had it been accepted, would have led to the wording of that Article corresponding in substance to the earlier law. When similar reservations were made, first by Libya on its accession in 1977 and secondly by Saudi Arabia on its accession in 1981, there were no new factors suggesting that this earlier conclusion was wrong. By way

of contrast the UK did object to a reservation made by Bahrain in 1973 under which Bahrain reserved the right 'to open the diplomatic bag if there were serious grounds for presuming that it contains articles the import or export of which is prohibited by law'.

15. All these reservations were made subsequent to ratification by the UK in 1964, which was the last occasion on which a reservation to the Convention could have been validly made by the UK.

16. The possibility of reciprocal discrimination against the Libyan diplomatic bag was not a factor in the consideration of whether to object to the Libyan reservation. The United Kingdom indeed recognises that that possibility exists. In practice, as indicated in the response to the previous question, Libya has never sought to rely on its reservation as against UK diplomatic bags.

QUESTION 12

On what occasions, if any, between June 1980 and April 1984, has HMG had reason to believe that the diplomatic bags despatched from Libya to the Mission in London contained articles not covered by the provisions of Article 27(4)? Was the suspected content of the diplomatic bags on any occasion raised with the Libyan authorities in Tripoli or London?

ANSWER

17. We had no specific evidence between June 1980 and April 1984 that diplomatic bags despatched to the Libyan mission in London contained articles not covered by the provisions of Article 27(4) of the Vienna Convention. No démarche on this subject was therefore made to the Libyans.

QUESTION 13

What has been the experience of the other Western European governments concerned in dealing with the People's Bureau or equivalents established in 1979 and recognised in June 1980? Have any of these governments sought to limit the size of the Bureau or to apply any restrictions to their operation as missions?

ANSWER

Paris, Rome, Valletta, Bonn, Madrid and Brussels (also accredited to The Hague). In all except one a particular individual is recognised as head of mission with the status of chargé d'affaires. In the remaining case although no individual member of the mission has been nominated as head of the mission its most senior member is in practice so treated. In 1983 four members of the Libyan People's Bureau in Bonn were withdrawn at the request of the Federal German Government. The Italian Government has limited the number of members of the Libyan People's Bureau to 40 diplomats and 36 administrative and technical staff.

QUESTION 14

What provisions of the Vienna Convention are regarded by HMG as ambiguous or as raising particular problems of interpretation or implementation?

ANSWER

19. Article 3(e) refers to the development of cultural relations between the sending and the receiving state. We do not interpret this as meaning that we are obliged to accept cultural centres and institutes as premises of the mission. Some countries dispute this view. Acceptance of such buildings as premises would lead to considerable cost to the Exchequer, since buildings accepted as premises of a mission are entitled to diplomatic rating relief. (See comment on Article 34(b) below).

20. Article 22.2 refers to the special duty of the receiving state to take all appropriate steps to protect the premises of a mission. This provision sometimes gives rise to difficulties of application:

for example where the Government could not have known in advance of a particular threat, or where a mission has failed to take adequate steps to protect the security of its own premises against intruders.

21. Article 25 states that the receiving state shall record full facilities for the performance of the functions of a mission. This vague obligation has been interpreted by some missions as obliging HMG to provide them with extensive parking facilities in Central London - an interpretation which we do not accept.

22. Article 27.3 states that the diplomatic bag shall not be opened or detained. Some states argue that this Article excludes the electronic scanning of a bag as being a form of constructive opening. On the other hand it may be argued that the Convention stops short of according 'inviolability' to the bag and that the negotiators who were fully conscious of the dangers of abuse did not intend to exclude external examination by equipment or by dogs as some kind of safeguard for the receiving state.

23. The interpretation of Article 31.1(a), dealing with immunity in relation to private immovable property, and Article 34(b), dealing with exceptions to relief from taxes and rates, has caused difficulties of interpretation as regards principal private residences. It is however for a court of law, and not for the FCO, to determine whether a diplomat is entitled to immunity in any particular case; and there have been several reported English cases on Article 31.1(a).

24. Article 36.1 refers to exemption from customs duties 'in accordance with such laws and regulations' as the receiving state may adopt. This reference is normally interpreted as a justification for quantitative restrictions imposed on cars, spirits and tobacco products. We have recently tightened up our restrictions on cars. Some missions have found these restrictions hard to accept.

25. The terms 'members of their families forming part of their respective households' in Article 37.1 has caused some problems of interpretation. The Vienna Conference failed to agree on a

definition of the term and it is for each state to apply a reasonable interpretation of it. The practice applied in the UK has not been generally challenged but individual cases such as adult students in their twenties living away from home give rise to difficulty.

26. There is no satisfactory definition of 'permanently resident' in Article 38.1 (and elsewhere in the Convention). Some diplomats stay in London for many years, particularly those married to British nationals. The UK have over the years evolved a consistent practice, set out in a Note to Missions of 27 January 1969 (text at Annex B) which has not been generally challenged; but individual cases still give rise to difficulty.

27. We know that some diplomats engage in business activities in direct contravention of Article 42. We have no powers to prevent this, except by the extreme sanction of declaring them *persona non grata*.

28. Some states interpret the wording of Article 45(a) as meaning that the premises of a mission continue to be inviolable even after a break in diplomatic relations. We do not share this view.

QUESTION 15

What instances have there been within the United Kingdom of known breaches of Article 27(4)? What were the circumstances in each case?

ANSWER

29. From time to time (about once a year, on average) such breaches come to our attention. Usually the prohibited import is drugs. Sometimes we are informed or helped with the investigation of the abuse by the Head of Mission, who is anxious to prevent any further abuse.

30. It is not our practice to disclose details of individual cases.

QUESTION 16

What other breaches of Article 27(4) are known by HMG to have occurred in foreign countries?

ANSWER

31. Information on breaches of Article 27(4) which are detected in foreign countries is not peculiarly within the knowledge of any Department of Her Majesty's Government. Some instances are mentioned in textbooks such as Satow: Diplomatic Practice; others were referred to by Members of the House of Commons in the Debate on the Police and Criminal Evidence Bill (new Clause proposed by Mr Eldon Griffiths) on 15 May (especially cols 240 and 241). In the nature of things very few breaches are ever detected: the scale of abuse can only be guessed at from circumstantial evidence and gossip.

QUESTION 17

What procedures, if any, exisit within the United Kingdom for the monitoring or screening of diplomatic bags?

ANSWER

32. None.

QUESTION 18

On how many occasions since the coming into force of the Convention have members of the diplomatic, administrative or technical staff of foreign missions in London, or members of their families, been known to have escaped arrest under Article 29 or prosecution for alleged serious criminal offences under the protection of Article 31? What were the circumstances in each case?

ANSWER

33. There have been 546 such occasions in the years 1974 to 1983

inclusive and 1984 to date. For the purpose of this Answer, 'serious' is defined as 'attracting penalties of six months or more imprisonment'. The table at Annex C gives a breakdown of the type of alleged offence and the year in which it was committed. It should be noted that since the cases could not be brought to court, the offences must be regarded as not proven.

34. It would not be in the best interests of our relations with the Diplomatic Corps to describe the circumstances of each case. Futhermore such information could be extracted from records only at disproportionate cost.

35. This information has been supplied by the Home Office.

QUESTION 19

On how many occasions since the coming into force of the Convention have members of the Diplomatic, Administrative or Technical staff of British Missions overseas, or members of their families, been known to have escaped arrest under Article 29 or prosecution for serious criminal offences under the protection of Article 31? What were the circumstances in each case?

ANSWER

36. We have no collective record of the occasions in which members of the Diplomatic Service escaped arrest by reason of Article 29 or prosecution for serious criminal offences by reason of the protection of Article 31. It would be prohibitively expensive to examine the personal files of all 6,700 current members of the Diplomatic Service, together with the files of officers from other Government Departments who have served at Diplomatic posts and those of officers who have retired since the Convention came into force. Our belief is that the number of such incidents is extremely small. Immunity has most usually been invoked in those countries where allegations of serious offences were contrived by the receiving State or where an officer for political, or politically related, reasons might receive unfair or

unreasonable treatment under the judicial system of the receiving State. These factors, as well as the gravity of the alleged offence, are taken into account when consideration is given to the possibility of waiving immunity.

QUESTION 20

Please supply such figures as are available of the total known alleged breaches of the road traffic laws, civil laws and administrative laws by the staff of foreign Missions in London which have escaped prosecution under Article 31.

ANSWER

37. The table at Annex D shows the total alleged offences against the Road Traffic Act 1972 (including the serious offences listed in the Answer to Question 18) for the years 1974 to 1983 inclusive and 1984 to date; and the number of fixed penalty notices (parking tickets) cancelled on grounds of diplomatic immunity for the period 1974 to 1983.

38. We cannot supply a meaningful figure for alleged breaches of administrative law, such as failure to pay a debt or to honour a contract, since we do not learn of such cases except where the plaintiff brings them to our attention.

QUESTION 21

On how many occasions, if any, has Her Majesty by Order in Council taken action to restrict the immunities and privileges of foreign diplomats under the provisions of section 3 of the Diplomatic Privileges Act 1964?

ANSWER

39. No Orders in Council have been made under the provisions of section 3 of the Diplomatic Privileges Act 1964.

40. Section 8(5) of the Act, however, provided that:-

> '(5) Any Order in Council under the Diplomatic Immunities Restriction Act 1955 which is in force immediately before the commencement of this Act shall, so far as it could have been made under section 3 of this Act, have effect as if so made'.

When the Act came into force on 1 October 1964 the Diplomatic Immunities Restriction Order 1956, as amended by the Diplomatic Restriction (Amendment) Order 1956, therefore continued in effect. This Order removed from certain classes of members of diplomatic missions (junior staff and servants) personal immunities from suit or legal process, to the extent necessary to ensure reciprocity with the treatment given to British members of diplomatic missions in the countries concerned. As each of the relevant countries in turn became parties to the Vienna Convention on Diplomatic Relations with the effect that reciprocity under the terms of the Convention was now assured, Her Majesty by Order in Council removed the relevant limitations in respect of that country. The final revocation Order, which related to the United States of America, was made in 1972.

41. The conditions necessary to enable an Order in Council to be made under section 3 of the Diplomatic Privileges Act have since then existed only as regards countries which have made reservations relating to the provisions of the Convention to which effect is given by the Act. (There have been short-term denials of reciprocity in regard to diplomatic bags but these have not lasted for long enough for an Order in Council to be made). The general policy of Her Majesty's Government since the Vienna Convention on Diplomatic Relations has been to seek to achieve the highest possible level of conformity with its terms. For that reason we have consistently objected to reservations which have seemed to us to be incomaptible with the objective of a uniform regime (these reservations, apart from the Bahrain one mentioned in the answer to Question 11, have been to Article 37 of the Convention). The objective has been to seek to persuade these countries to withdraw their reservations (an objective which has been successful on some occasions) and in

addition to press for reciprocal treatment on a bilateral basis for UK diplomatic staff in the reserving country.

QUESTION 22

Is it the policy of HMG to accord diplomatic status to any individual so nominated by a sending state, unless there are positive reasons for declaring an individual persona non grata, or are certain criteria regularly applied?

ANSWER

42. HMG do not accord diplomatic status. This is done by the sending State pursuant to its right under Article 7 of the Convention freely to appoint the members of the staff of the mission. There is no obligation to notify appointments in advance (except for the Head of Mission) and advance notifications are not usual except where a visa is required. Where we are notified in advance of a nomination through the visa system, we refuse to grant the visa in cases where the nominated person is regarded as unacceptable. We also sometimes try informally to persuade Missions to withdraw a nomination in cases where the appointee is clearly fulfilling an administrative and technical rather than a diplomatic function; or is not carrying out any of the functions of the mission as described in under Article 3 of the Convention. We have also pressed, successfully, for withdrawal of notification in a very few cases where criminal charges were pending.

QUESTION 23

Does HMG believe that the Convention provides sufficient scope for the receiving country to vary the operation of particular provisions in cases where serious abuses of the Convention are known to have occurred?

ANSWER

43. Yes. It should be stressed that there has been no previous

occasion on which the UK has suffered from an abuse of the Convention of remotely comparable gravity. The Convention itself provides remedies against individuals who abuse their status by failing to respect our laws and regulations; and in cases where individuals who cannot be prosecuted are not immediately withdrawn by the sending State (as usually happens), we either exercise our powers to declare them persona non grata or, in the case of criminal offences which are serious but not on a par with murder or espionage, request an early transfer of the individual concerned. Where the missions collectively or the sending State can be regarded as responsible, the ultimate sanction under the Convention is breach of diplomatic relations, but this sanction has never previously been seriously contemplated in this context by the UK. A much more common breach of the Convention (although not properly speaking an abuse of the Convention) consists in failure by a receiving State to accord appropriate protection to an Embassy against mob attack - often officially inspired. There have been numerous instances of this in recent years, but the States affected have usually responded by no more than a down-grading of level of their diplomatic representation.

44. The Convention must of course be read within the framework of other rules of international law, including those which allow for the possibility of counter-measures in response to a material breach of a treaty by another party. In the context of a treaty such as the Vienna Convention, however, where a primary purpose is to protect diplomats from the consequence of a charge of breach of local laws and where considerations of reciprocity play in practice so central a role, the possibility of retaliatory action, however unlawful, by the other party would clearly have to be taken into account before any decision was taken to resort to counter-measures; and any such recourse would have to be undertaken with the greatest restraint and with full awareness of the wider implications.

45. It should also be recalled that the rules of the Convention do not prejudice the fundamental right of self-defence either in international law or in domestic law. Self-defence was relied on by the Government in conducting a search of all those emerging

from the Libyan People's Bureau, who were personally searched for weapons and explosives before it was established whether or not they were diplomats. This was considered essential for the protection of police officers handling this stage of the expulsion.

46. Lastly, any consideration of the sufficiency of the scope which the Convention, taken together with other rules of international law, affords to the receiving state to vary the operation of particular provisions must necessarily take account of the risks to the diplomatic missions of the UK and friendly countries that any enlargement of that scope would involve. It would be unrealistic to discount the possibility that greater scope for unilateral variation by the receiving state of the operation of provisions for theinviolability of diplomatic premises and the immunities of diplomats could be exploited in a way which would be seriously damaging to UK and wider Western interests.

QUESTION 24

What is the practice of other countries in respect of the immunity of diplomatic and other staff from arrest under Article 29 or prosecution under Article 31? Are there any countries which have in particular cases or in general removed or varied the effect of the immunity provided under Articles 29 or 31, other than those cases where formal reservations have been entered in respect of Article 37(2)-(4)?

ANSWER

47. Setting aside the cases where reservations have been made to Article 37 of the Convention, the Government are not aware of any States having in particular cases or in general removed or varied the effect of the immunity provided under Articles 29 or 31.

QUESTION 25

With what countries, if any, has HMG entered into bilateral agreements to modify the effects of the immunity granted under Articles 29 and 31?

ANSWER

48. The administrative and technical staff, service staff and private servants of Bulgaria, Czechoslovakia and USSR enjoy by virtue of special bilateral agreements the same immunity from jurisdiction and from arrest or detention and the same inviolabiltiy of residence as are enjoyed by diplomatic agents.

49. All these agreements pre-date the Diplomatic Privileges Act 1964 and were preserved in effect by its provisions. There is no power under the Act to give effect to new agreements varying the provisions of Articles 29 and 31.

QUESTION 26

Are the diplomatic immunities and privileges of the Missions of Commonwealth States in the United Kingdom in all respects identical to those of foreign states?

ANSWER

50. No. Members of a Mission of a Commonwealth country and private servants who are citizens of that country and of the United Kingdom are accorded the privileges and immunities to which they would have been entitled if they had not been citizens of the United Kingdom. They are thus treated more favourably than members of foreign Missions having dual nationality or citizenship, who under Article 38.1 of the Convention enjoy only immunity from jurisdicion, and inviolability, in respect of official acts performed in the exercise of their functions.

51. Commonwealth Missions are also treated more favourably in connection with refunds of VAT. Under Article 34(a) of the Convention a diplomatic agent is not exempt from 'indirect taxes of a kind which are normally incorporated in the price of goods or services'. As a concession VAT is refunded to High Commissions and to the Irish Embassy on purchases made in the UK of goods and stationery of British manufacture for the official use of the mission. Foreign missions however receive, also as a concession, VAT refunds only on purchases of substantial quantities of fine quality British furniture or furnishings for the initial equipment

or for the re-equipment of the reception rooms only of the Missions or of the official residence.

QUESTION 27

What are the principal differences between the diplomatic immunities and privileges of foreign missions and those of international organisations?

ANSWER

(a) Organisations

52. Under the International Organisations Act 1968 as amended by the International Organisations Act 1981, HMG may by Order in Council provide that any international organisation of which the UK and at least one other foreign government are members enjoy the following privileges and immunities:

(1) Immunity from suit and legal process.

(2) The like inviolability of official archives and premises of the organisation as, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives and premises of a diplomatic mission.

(3) (i) Exemption or relief from taxes, other than duties (whether of customs or excise) and taxes on the importation of goods.

(ii) The like relief from rates as in accordance with Article 23 of the 1961 Convention Articles is accorded in respect of the premises of a diplomatic mission.

(4) Exemption from duties (whether of customs or excise) and taxes on the importation of goods imported by or on behalf of the organisation for its official use in the United Kingdom, or on the importation of any publications of the organisation imported by it or on its behalf, such exemption to be subject to compliance with such conditions as the Commissioners of Customs and Excise may prescribe for the protection of the Revenue.

(5) Exemption from prohibtions and restrictions on importation or exportation in the case of goods imported or exported by the organisation for its official use and in the case of any publications of the organisation imported or exported by it.

(6) Relief, under arrangements made either by the Secretary of State or by the Commissioners of Customs and Excise, by way of refund of duty (whether of customs or excise) paid on imported hydrocarbon oil (within the meaning of the Hydrocarbon Oil Duties Act 1979) or value added tax paid on the importation of such oil which is bought in the United Kingdom and used for the official purposes of the organisation, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

(7) Relief, under arrangements made by the Secretary of State, by way of refund of car tax paid on any vehicles and value added tax paid on the supply of any goods or services (Section 55(5) Financial Act 1972) which are used for the official purposes of the organisation, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

These constitute broadly the same privileges and immunities as are enjoyed by diplomatic missions.

(b) Individuals

53. High officers may be accorded broadly the same privileges and immunities as diplomatic agents. There are only 13 high officer posts, in 10 organisations based in London, who are given such treatment.

54. Senior officials and other officials notified to the Foreign and Commonwealth Office may be accorded immunity from suit and legal process only in respect of things done or omitted to be done in the course of the performance of official duties; exemption from UK income tax on their emoluments from the organisation; exemption from customs duties on first arrival to take up their post; exemption from customs duties for one car plus one replacement of that car; and installation. They thus enjoy substantially less immunity but broadly the same level of privileges as members of the administrative and technical staff of a diplomatic mission.

QUESTION 28

On which countries' initiative was the decision taken by the UN

General Assembly in 1976 to refer the question of diplomatic bags and couriers to the International Law Commission? What is HMG's present attitude to the draft articles currently under consideration by the ILC?

ANSWER

55. At the 65th meeting of the 6th Committe of the General Assembly on 7 December 1976, the representative of the Union of Soviet Socialist Republics introduced a draft resolution (A/C.6/31/L.16) on behalf of Argentina, Bulgaria, Cuba, Cyprus, German Democratic Republic, Hungary, Mali, Poland and the Union of Socialist Republics, later joined by Algeria, Burundi, and the Byelorussian Soviet Socialist Republic, Czechoslovakia, Egypt, India, Liberia, Panama, and Somalia. The draft resolution included the following paragraph:-

> '4. Requests the International Law Commission at the appropriate time to study, in the light of the information contained in the report of the Secretary-General on the implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 (A/31/145 and Add.1) and other information on this question to be received from Member States through the Secretary-General, the proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by the diplomatic courier which would constitute development and concretization of the Vienna Convention on Diplomatic Relations of 1961;'

56. The UK have consistently maintained a reserved attitude to this exercise by the International Law Commission, particularly having regard to the fact that the principal objective of the sponsors of the original resolution was to provide increased inviolability and immunity for the bag and the courier. They have studied the draft articles which are currently under consideration by the International Law Commission, which provide, in accordance with the original intentions of those who raised this question, for substantially increased immunities for bag and courier. They continue to believe that these articles do not reflect the way in

which the provisions of the Vienna Convention on the bag and the courier ought to be developed.

QUESTION 29

Which particular Articles of the 1961 Convention does HMG propose to raise at this year's session of the ILC?

ANSWER

57. The agenda of the ILC, the members of which sit in their individual capacities and not as representatives of Governments, is settled by the Commission itself in the light of recommendations of the General Assembly. This year's agenda contains no topic, other than that of the Status of the Diplomatic Courier and the Diplomatic Bag not accompanied by Diplomatic Courier, which would admit of consideration by the ILC of Articles of the Vienna Convention. If HMG wished the ILC to consider at a future session other Articles of the Convention, in addition to those concerned with the status of the bag and courier, it would be open to them to make proposals to that effect at this year's regular session of the General Assembly.

QUESTION 30

What response has HMG so far received to the approaches already made to friendly governments about the possible amendment of the Convention?

ANSWER

58. Friendly Governments with whom we have been in contact about the possibility of amendment of the Vienna Convention have stressed the dangers to Western European interests as a whole which they believe would arise from re-opening the provisions of the Convention. They have stressed that the almost universally accepted framework on which diplomatic relations are based should not be put at risk

because of abuse by a tiny minority of States. Some of them have expressed the view that the international Community should concentrate on isolating any State which abuses the basic rules of the system.

QUESTION 31

Please summarise the formal procedure for seeking amendment of the Convention.

ANSWER

59. The Vienna Convention contains no provision for its amendment and there is accordingly no single formal procedure for seeking amendment. In considering what procedure would be appropriate for seeking amendment, if it were concluded that this course was in the overall interest of the UK, HMG would think it right to have regard to the terms of Article 40 of the Vienna Convention on the Law of Treaties, which provides as follows:

> '1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
>
> 2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
>
> (a) the decision as to the action to be taken in regard to such proposal;
>
> (b) the negotiation and conclusion of any agreement for the amendment of the treaty.
>
> 3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
>
> 4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; Article 30 paragraph 4(b) applies in relation to such State.
>
> 5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

> (a) be considered as a party to the treaty as amended; and
>
> (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement'.

(Although the Law of Treaties Convention does not apply to treaties which, like the Vienna Convention on Diplomatic Relations, were concluded before its entry into force, this Article is among those which HMG regard as reflecting relevant rules of customary international law).

60. Among the possible ways in which an amendment might be sought would be to request the inclusion of an item on the agenda of this year's regular session of the General Assembly. (This would be unnecessary if the amendment were concerned only with the diplomatic bag or courier, because such an amendment could be pursued in the context of the item on the Report of the International Law Commission). We could then propose that the question should be further studied by the ILC (which originally prepared the draft articles on which the Vienna Convention was based), making clear the nature of the amendments we ourselves thought desirable. Alternatively, our proposal could be that UK draft amendments should be discussed in the Sixth (Legal) Committee of the General Assembly, with a view to the eventual adoption by the General Assembly of an ameding Protocol. Another possibility would be to propose the urgent convocation by the Secretary-General of a UN conference to consider a draft amending Protocol which we ourselves might circulate. A further possibility, which unlike the foregoing would not involve recourse to the General Assembly, would be for us to issue invitations to a conference in London to consider UK draft amendments; but that would be a highly unusual way of seeking to amend a UN Convention and might well lead to a reluctance on the part of some states to participate.

QUESTION 32

In view of the likely difficulty of securing an early revision of the Convention, what thought is HMG giving to a multilateral agreement amongst friendly governments to vary the interpretation of certain Articles? What other unilateral or multilateral action is being considered?

ANSWER

61. Her Majesty's Government have not yet concluded that a different interpretation of any particular Articles is desirable. If they were to do so, a multilateral agreement amongst friendly governments would be among the possibilities which they would consider. Unilateral action in the form of a more rigorous use of existing powers under the Vienna Convention has already been announced by the Secretary of State for Foreign and Commonwealth Affairs in his statement to the House of Commons on 1 May 1984. Multilateral action is, as the Committee will be aware, under consideration by the Council of the European Communities and will be proposed to the Economic Summit. No proposals for revision of the Convention have, however, been made by Her Majesty's Government in any multilateral fora.

FOREIGN AND COMMONWEALTH OFFICE

6 June 1984

FCO/FAC/13/84

SELECT COMMITTEE ON FOREIGN AFFAIRS

Memorandum by the Foreign and Commonwealth Office

DIPLOMATIC IMMUNITIES AND PRIVILEGES

QUESTION 1: WHAT INFORMATION DOES THE FCO RECORD ABOUT THE SIZE AND WEIGHT OF DIPLOMATIC BAGS RECEIVED IN THIS COUNTRY?

No records are kept of the size or weight of diplomatic bags entering this country in the care of a diplomatic courier or an airline pilot. Unaccompanied bags travelling as air freight are accompanied by an air waybill which gives the weight of the bag, but not necessarily the size. This information is recorded by HM Customs and Excise.

QUESTION 2: WHICH STATES, IF ANY, RECORDED ANY KIND OF OBJECTION TO THE UNITED KINGDOM'S SEARCHING OF THE LIBYAN MISSION PREMISES AFTER THE BREAK IN DIPLOMATIC RELATIONS? WHICH ARE THE STATES REFERRED TO IN PARAGRAPH 28 OF YOUR MEMORANDUM AS REGARDING THE PREMISES OF SUCH A MISSION TO BE INVIOLABLE?

Only Libya objected to this. We have no record of which states interpret the wording of Article 45a of the Vienna Convention as meaning that the premises of a mission continue to be inviolable even after a break in diplomatic relations; but we know, for example, that the Government of South Korea hold this view.

QUESTION 3: WHAT HAS BEEN THE EXPERIENCE OF GOVERNMENTS OTHER THAN WESTERN EUROPEAN GOVERNMENTS IN DEALING WITH THE PEOPLE'S BUREAUX ESTABLISHMENTS IN 1979/80?

Many non-West European countries did as we did, and found ways of fitting the new 'People's Bureaux' into their local diplomatic structures. We know of some 80 Libyan Missions world-wide. To our knowledge, 23 'People's Bureaux' were declared in 1980, 10 in 1981, 1 in 1982 and 6 in 1983. Libyan Missions in Arab countries are called 'Brotherhood Bureaux'.

QUESTION 4: COULD THE FCO MAKE AVAILABLE THE CIRCULARS THAT WE UNDERSTAND WERE SENT TO THE DIPLOMATIC CORPS CONCERNING POSSIBLE INVOLVEMENT OF EMBASSY STAFF IN TERRORIST OFFENCES.

The relevant circulars are at Annex 1.

QUESTION 5: (a) HAVE THOSE EMPLOYEES OF THE IRAQI EMBASSY, NOT HAVING DIPLOMATIC STATUS AND CHARGED IN MAY 1982 WITH THREATENING BEHAVIOUR, BEEN ALLOWED TO REMAIN IN THE COUNTRY? (b) WAS THE MEMBER OF THE IRAQI EMBASSY HAVING DIPLOMATIC STATUS AND WHO ASSAULTED A POLICEMAN IN MAY 1982 DECLARED PERSONA NON GRATA?

(a) We understand from the Home Office that the three employees were convicted in August 1982: one was fined £50 and the other two bound over on a recognisance of £50. They were not deported.

(b) No. The Vice-Marshal of the Diplomatic Corps wrote to the then Chargé d'Affaires at the Iraqi Embassy about the assault on a police officer committed by a clerk at the Iraqi Embassy who was entitled to immunity. The Chargé d'Affaires replied on 12 August saying that he very much regretted that one of his staff had been involved in such an incident; and that he had discussed the matter with the offender and had been assured that it would not happen again. In view of this apology, and since the assault was not a serious one, no further action was taken.

QUESTION 6: IS THE GOVERNMENT BROADLY SATISFIED THAT THERE IS NO SIGNIFICANT ABUSE OF THE MORE LIMITED IMMUNITIES AND PRIVILEGES ACCORDED TO INTERNATIONAL ORGANISATIONS?

Most officials working for international organisations are immune from criminal jurisdiction only in respect of their official acts. So far as we are aware, very few breaches of our law have been committed by persons connected with international organisations.

QUESTION 7: DO YOU REGARD THE WORK OF THE INTERNATIONAL LAW COMMISSION ON THE DIPLOMATIC COURIER AND THE UNACCOMPANIED DIPLOMATIC BAG AS HOLDING POSSIBILITIES FOR CONTROLLING ABUSE; OR AS, ON THE CONTRARY, MAKING SUCH CONTROL MORE DIFFICULT?

From the purely procedural point of view it is helpful that the topic of diplomatic bags and couriers is already under study by the International Law Commission. This means that ideas for change in this area can be discussed more readily among the international community without incurring the risks to United Kingdom interests more generally which might result if we were to seek ourselves to re-open the Vienna Convention. As has been indicated in previous evidence*, it makes it possible for us to place our views on matters within the scope of the topic on the record in the UN in the context of the General Assembly item on the Report of the International Law Commission, without especially requesting inclusion on the agenda of any new item.

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*Footnote: FCO Memorandum dated 6 June 1984, paragraph 60

On the other hand, the history of the matter and the content of the current draft articles[+] indicate that as a matter of substance efforts to control abuse of the bag may be more difficult as a result of the pressures from other Governments to provide increased immunity for the bag and the courier. It remains the case that the majority of Governments appear to be more concerned with the security of their diplomatic communications than with the possibility of abuse, and it would require a reversal of the recent trend to alter the rules in the direction of making control of abuse more effective.

QUESTION 8: PARAGRAPHS 19 TO 28 OF YOUR MEMORANDUM INDICATE TEN AREAS OF AMBIGUITY IN THE CONVENTION. IN THE MEMORANDUM AND IN YOUR ORAL EVIDENCE, YOU INDICATE THE DIFFICULTIES IN AMENDING THE CONVENTION: IS CONSIDERATION BEING GIVEN TO SEEKING INTERNATIONAL ACCEPTANCE TO A SUPPLEMENTARY CLARIFYING PROTOCOL TO RESOLVE THE AMBIGUITIES?

The ten provisions listed in paragraphs 19 to 28 of the Memorandum are not all areas of ambiguity in the Convention. The Committee in question 14 also asked about provisions regarded by HMG as raising particular problems of implementation. The comments on Article 3(e), 22.2, 36.1, 42 and 45(a) were based on the practical difficulties of implementation encountered by FCO Protocol Department in their day to day experience of implementing the Convention. As regards the other Articles listed which either contain ambiguities or have required the development of supplementary interpretative practice, the position needs to be considered for each separately.

The question of screening of the diplomatic bag (Article 27.3) is already under discussion by the International Law Commission and a supplementary agreement is likely to emerge as a result of further international discussion. The Committee will be aware from the written evidence submitted by Sir Ian Sinclair of the progress of the work of the International Law Commission in this area. Article 25 is indeed uncertain in its extent. It is not among the provisions scheduled to the Diplomatic Privileges Act 1964 as it was not thought to require any specific derogation from the ordinary law of the UK. To suggest a clarification would be likely to lead to various demands for specific facilities which would be difficult or expendisve to provide - such as assistance in finding accommodation or additional parking facilities.

As regards Article 31.1(a) and Article 34(b) the Foreign and Commonwealth Office were principally concerned in the early years of application of the Convention (during which the problem was

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[+] Explained in FCO Memorandum dated 6 June 1984, paragraphs 55 and 56 extensively studied by our legal advisers) with the overall financial implications. Since we maintained a large overseas estate, we would, on balance, have suffered considerable financial loss had a restrictive application of Article 34(b) been accepted. Although not all countries resolved the ambiguity in the same way, we have in fact almost always been able to secure relief in other countries from property taxes on residencies of our diplomats, although in some cases this has depended in part on reciprocity. There would therefore be no overall financial advantage to the UK by seeking to re-open Article 34(b). We are not aware that Article 31(1)(a) has caused practical difficulties to plaintiffs. The view of our legal advisers* would be that it would seem in principle the better view that the courts of the receiving State should be entitled to exercise normal jurisdiction in respect of principal private residences. To re-open the provision might result in a contrary view receiving majority acceptance.

As regards Article 37.1, it would have been prefereable if a definition of the term had been contained in the Convention. The UK practice is+:-

> 'The Government of the United Kingdom, in administering privileges, interpret the expression 'member of his family forming part of his household' as including the spouse and minor children, and certain other persons in exceptional circumstances. Minor is construed in accordance with United Kingdom law as meaning a child under 18. There are no fixed rules in regard to the additional persons, but in practice they fall into three categories:-
>
> > (a) a person who fulfils the social duties of hostess to the diplomatic agent (for example the sister of an unmarried diplomat or the adult daughter of a widowed diplomat);
> >
> > (b) the parent of a diplomat living with him and not engaged in paid employment on a permanent basis; and
> >
> > (c) the child of a diplomat living with him who has attained majority but is not engaged in paid employment on a permanent basis. Students are included in this category provided that they reside with the diplomat at least during vacations'.

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* Denza 'Diplomatic Law' pp 156-159

+ " " " pp 225

This practice was elaborated in the early years of application of the Convention in the light of UK interests and experience. Should this provision be re-opened we would seek to reflect it in the Convention, but there might well be pressure for a more extended definition of the term which would increase the number of persons entitled to immunity.

As regards the definition of 'permanently resident' in Article 38.1 where the Committee are already aware of consistent UK practice, there has been no challenge over these general principles. We should seek to reflect them if the provision were re-opened, but there could be no guarantee that we would succeed and no obvious advantage to the UK even if we did.

QUESTION 9a: IS THE GOVERNMENT DISAPPOINTED WITH THE DEGREE OF AGREEMENT IN THE LONDON SUMMIT DECLARATION ON INTERNATIONAL TERRORISM, IN PARTICULAR THE FAILURE TO RECORD ANY SPECIFIC SUPPORT FOR GREATER CONTROLS ON INDIVIDUALS WITH DIPLOMATIC IMMUNITY WHO COMMIT TERRORIST OFFENCES, AND ON THE DIPLOMATIC BAG?

No. The participating governments expressed their serious concern in the declaration at the increasing involvement of states and governments in acts of terrorism, including the abuse of diplomatic immunity. Although the declaration did not record any specific support for greater controls on individuals with diplomatic immunity who commit terrorist offences and on the diplomatic bag, we know that our views on these two subjects are shared by many overseas governments.

QUESTION 9b: HOW COULD THE EXCLUSION OF TERRORISTS WITH DIPLOMATIC IMMUNITY BE ACHIEVED, GIVEN THAT UNDER THE VIENNA CONVENTION AGREMENT IS REQUIRED ONLY FOR THE HEAD OF MISSION?

We are able through the visa system to exclude in advance of their arrival in this country diplomats from certain countries. We should not hesitate to refuse a visa to anyone known to have been involved in terrorist activity. If such involvement were to come to light after the arrival of the individual in this country, we should declare him persona non grata or request his withdrawal.

QUESTION 10: DOES THE GOVERNMENT CONSIDER THAT ISOLATION OF STATES WHICH ABUSE THE CONVENTION, AS SUGGESTED IN PARAGRAPH 58 OF YOUR MEMORANDUM, IS A FRUITFUL LINE OF APPROACH: AND IF SO, WHAT STEPS ARE BEING TAKEN TO DEVELOP THIS LINE? HOW CAN SUCH ISOLATION BE ACHIEVED WITHIN THE FRAMEWORK OF A CONVENTION, OTHER THAN BY A REFUSAL TO HAVE DIPLOMATIC RELATIONS WITH THE COUNTRIES CONCERNED?

In principle we support the view that the international community should concentrate on isolating any State which abuses the basic rules of the system of diplomatic relations. In practice few governments are willing to break off diplomatic relations with another country simply as a measure of support for an ally which has already done so - primarily because no government wishes to jeopardise its overseas trade unless there appears to be no alternative. Apart from a breach of diplomatic relations, the possibilities of isolation offered within the framework of the Convention include withdrawal of a mission, withdrawal of a head of mission as a mark of disapproval, down-grading the level of head of mission (eg from Ambassador to Chargé d'Affaires) and exemplary declarations of persona non grata. Such measures can be still more effective if they are carried out by a number of countries in concert. Moving away from the question of diplomatic representation, another possibility is to refuse to allow any official visits to or from the offending State. Trade sanctions have been shown over the years to be ineffective. Boycotts on sporting links with the offending country are a possibility. It may sometimes be better to maintain a dialogue with States which abuse the norms of diplomatic behaviour than to sever all contacts. The number of States who have abused the Convention is small and each case would always have to be carefully assessed by Governments directly affected or contemplating sympathetic action.

FOREIGN AND COMMONWEALTH OFFICE

16 July 1984

Senator DENTON. Just 1 month ago, shortly after Senator Specter and I introduced S. 2771, our own Secretary of State, Mr. Shultz, speaking before the Jonathan Institute on Terrorism, suggested a need for new means to combat state-sponsored terrorism.

S. 2771 is designed to respond to situations such as the barbaric outrage perpetrated in London. We need to take action to deter countries such as Libya or Iran from employing terrorism here or anywhere else for that matter. We need to deter it, and some of the suggestions I have heard as alternatives to this legislation are not, in my mind, deterrents.

Our need to do so is amplified by the fact that, even though we do not maintain full diplomatic relations with these two particular countries, their diplomats are still in the United States as representatives to the United Nations.

Of course, the constitutionality and implementation of S. 2771 would depend on amending the 1961 Vienna Convention on Diplomatic Relations, as proposed in a companion measure, S. Res. 395, that has been referred to the Committee on Foreign Relations. I realize, of course, that S. 2771 may meet serious opposition out of concern over the many problems, as some people see it, it would pose for diplomatic privileges and immunities. I believe, however, that the bill provides a useful point of departure for consideration of the issue of the threat of state-sponsored terrorism by protected officials, and measures that may be taken to counter it.

I personally believe that the passage of this bill would not be disadvantageous, but if it is ruled to be so by my colleagues, it will be in the context of a point of departure that these hearings are being conducted.

[A copy of S. 2771 follows:]

II

98TH CONGRESS
2D SESSION

S. 2771

To protect the internal security of the United States against international terrorism by making the use of a firearm to commit a felony by foreign diplomats in the United States a Federal felony.

IN THE SENATE OF THE UNITED STATES

JUNE 15 (legislative day, JUNE 11), 1984

Mr. SPECTER (for himself and Mr. DENTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To protect the internal security of the United States against international terrorism by making the use of a firearm to commit a felony by foreign diplomats in the United States a Federal felony.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 929. Foreign diplomats

"(a) It shall be unlawful for—

"(1)(A) any member of a foreign diplomatic mission in the United States entitled to immunity from the criminal jurisdiction of the United States under the provisions of the Vienna Convention on Diplomatic Relations, done on April 18, 1961; or

"(B) any member of a foreign consular post in the United States entitled to immunity from the criminal jurisdiction of the United States under the provisions of the Vienna Convention on Consular Relations, done on April 24, 1963,

to use a firearm to commit any act constituting a felony under the criminal laws of the United States or any State.

"(b) Whoever violates this section shall be punishable by a fine of $10,000 or by imprisonment for 10 years, or both.

"(c) For purposes of this section—

"(1) the term "member of a foreign diplomatic mission" includes any individual described by Article 1(b) of the Vienna Convention on Diplomatic Relations, done on April 18, 1961; and

"(2) the term "member of a foreign consular post" includes any individual described by Article 1(g) of the Vienna Convention on Consular Relations, done on April 24, 1963.".

(b) The analysis for chapter 44 of title 18 United States Code is amended by adding at the end thereof the following:

"929. Foreign diplomats.".

○

Senator DENTON. With that, I welcome our witnesses this morning, again, and remind us all that our friend from the Keystone State, Senator Arlen Specter, is the coauthor of the legislation we are discussing today.

He and his staff have worked very closely with my staff and myself in jointly working this out. I have mentioned the other witnesses and will mention some of their qualifications as they testify.

I want to welcome and wish a good morning to Senator Specter and ask if he has an opening statement.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman. I would ask that my prepared statement be made a part of the record, and I will then summarize the issues raised in the prepared statement and amplify them to some extent.

Senator DENTON. Without objection, the prepared statement will be entered into the record.

Senator SPECTER. I commend you, Mr. Chairman, for the leadership which you have shown in the U.S. Senate on the important subject of terrorism and for the work which you and your staff have done in scheduling the hearings on the important issues which are raised as a result of the murder of the British policewoman in the incident outside the Libyan Embassy in London.

And as you have accurately noted, that was the triggering factor which led you and me to introduce S. 2771 and for the introduction of the corollary Senate Resolution 395, which calls for the revision of the Vienna Convention of 1961.

And stated simply, Mr. Chairman, S. 2771 narrowly drawn would make it a criminal offense against the laws of the United States for someone who had been able to claim diplomatic immunity to engage in an act of criminal violence with a firearm.

In my judgment, the laws relating to diplomatic immunity have a legitimate purpose where the acts of the diplomat are related to his work as a diplomat, but they have no purpose where the acts go far beyond the legitimate scope of activity for which the diplomat is realistically engaged.

Diplomatic immunity has been granted under the Vienna Convention on the supposition that where crimes are committed by the diplomat in a foreign state, the home state will prosecute the diplomat for any such criminal conduct.

That obviously will not happen in the case where the diplomat is ordered to engage in the criminal conduct by the home state. So we have a situation where the acts are ordered by Colonel Qadhafi and the murder is committed by a Libyan diplomat and, under the Vienna Convention, he walks out of Britain scot-free, and certainly he is not going to be prosecuted; the subsequent events have demonstrated that he is not to be prosecuted in Libya.

It is my suggestion, Mr. Chairman, that these acts are simply intolerable under U.S. law, under British law, even under Libyan law, and certainly under international law, and it is my sense that S. 2771 and Senate Resolution 395 are very important steps in starting the dialog to take aggressive action by the U.S. Government to see to it that there is a realistic response to international terrorism and to see to it that simply stated, under the guise of diplomatic immunity, people do not get away with murder or assault with deadly weapons in the United States.

Now, I am aware of the concerns which have been expressed by representatives of the State Department and the line of analysis set forth in the statements which have been presented here today that were we to adopt this approach, and the testimony of Deputy Legal Advisor McGovern raises a concern about what would happen to the U.S. representatives in other foreign nations and what would happen, for example, to U.S. Marines who fire weapons in Lebanon.

I would suggest, Mr. Chairman, that the analogy is not appropriate. The marines in Lebanon are not covered by diplomatic immunity in any event, so that whatever we do on the subject of diplomatic immunity is not going to affect activities like those of our marines in Lebanon.

I think the reality is that they are not subject to criminal prosecution in any event because of the nature of their assignment, the international collaboration among the United States, Great Britain, France, and Italy. Absent some losing effort and some trial like a Nuremburg trial, there is no realistic analog to suggest that there would be a prosecution against the U.S. Marines. But if there were to be any such prosecution, it would be irrelevant to the subject of diplomatic immunity.

Where the statement of Advisor McGovern raises the concern that U.S. diplomats would be subjected to reciprocal prosecutions or actions by foreign governments, I would suggest that the incident in Iran shows that where the foreign governments want to act in an irrational and barbaric way, there is ample latitude for them to do so at the present time.

They simply do what they chose in seizing our Embassy, and that if someone is going to frame a U.S. diplomat on a charge of using a firearm, or a gun, or a weapon in an act of international terrorism, they will undertake such brutal and senseless activity whether or not we have some rational way to limit such acts of international terrorism. That if you deal with a Khomeini in Iran or his counterpart, a Qadhafi in Libya or others who would be of such a mind, that they are not going to need the umbrella of reciprocity to commit such irrational acts.

And I do concede that there is some area of additional exposure, but I would suggest that it is a necessary form of exposure so that we would not be subject and the world would not be subject to the kind of terrorism which was at play in Libya.

Mr. Chairman, there is a great deal which is happening in the world today which requires, in my judgment, an aggressive response by the United States. As the prosecutions are unfolding in Italy relating to the attempted assassination of the Pope, we see ties to the Bulgarian Government.

There is the implication of potential Soviet involvement, potential KGB involvement, and little more need be said than the inference which arises as to the logical thought that there may be such involvement given what we know of the facts to date; we will have to see more as that case evolves.

The incident in Nigeria with the crates and the attempted kidnaping is a very recent, bizarre event which is under the auspices of or guise of international terrorism.

The bill which has been introduced, S. 2771, is a limited bill. As I have witnessed crimes being committed in the United States under the guise of diplomatic immunity from my position as former district attorney of Philadelphia, I have been horrified to see sons of diplomats escape charges of involuntary manslaughter in automobile accidents which have occurred from time to time where they were not diplomats, and the driving of an automobile and the killing of a person incidental there has nothing to do with diplomacy.

And from time to time, there are incidents like rapes where diplomats are accused of forceable rape, something which obviously has nothing to do with diplomacy, and they have escaped the potential of criminal prosecution.

The laws ought to be applied uniformly and evenly to any man or woman regardless of whether they may be a diplomat and cast under the umbrella of diplomatic immunity. But this legislation does not seek to move in a broad sweep on what we might encompass if we were seeking justice and if we were seeking to stop acts of criminality which were unrelated to a legitimate diplomatic purpose.

This bill is narrowly drawn which goes at the most reprehensible kinds of aggressive conduct with firearms eventuating in aggravated assault and battery or homicide so that it is a narrowly drawn bill.

Mr. Chairman, it is my view that what we are talking about today is really just part of what the United States ought to be doing in initiatives in the international community to bring international criminals to justice, and it is obvious that the interests of the United States may be separate and distinct from the interests of the Soviet Union in such a move or the interests of nations like Libya.

And it is my judgment that the United States should be marshaling its allies, the Western World, to do what we can on the international tribunal level to bring criminals to justice in international matters.

And it may well be that the attempted assassination of the Pope, once the Italians are finished with the prosecution which they have jurisdiction through national lines, that that entire case might be appropriately referred to an international tribunal.

There are a number of analogies on international cooperation as Interpol, chiefs of police around the world cooperating. There are extradition treaties where one nation will see to it that a criminal who has fled across national lines will be sent back to the demanding nation so that the prosecutions may be undertaken.

And those, Mr. Chairman, are insufficient. I remember well a Brazilian sailor who was suspected of murdering a woman in the city of Philadelphia, who got on the ship and got back to Brazil, and an international treaty was not available to compel the return of that individual.

And I recall well a matter involving Rhodesia back in 1966 where there were grave problems but we finally secured the return of a fugitive who was placed on a nonstop plane from Salisbury to

Johannesburg, and there to be met by detectives from the Philadelphia district attorney's office.

And I mention these matters only in passing to set the stage for existing cooperative action among civilized nations to see that international criminals are brought to justice.

We have proceedings under deportation where the United States cooperates with the Soviet Union at the present time in gathering evidence on Nazi war criminals leading to deportation, matters which are now pending in the courts of the United States, a celebrated case now pending in Philadelphia.

So that there are analogies to nations operating in good faith to bring criminals to justice. But where we ought to be taking affirmative steps to see to it that criminals are brought to justice, we certainly should not permit the shield of diplomatic immunity to stop warranted prosecutions where, for example, Britain has jurisdiction over the murder who is on British soil, who has shot a British policewoman.

So that what we are doing here today, Mr. Chairman, I would suggest to you is a modest start. It is a start not to bring international criminals to justice in a more broad and pervasive way which I think we should address, but it is to stop a criminal who has committed a crime in Great Britain or who might commit a crime in the United States from using diplomatic immunity as a shield to escape prosecution and to go back to a nation whose leaders ordered that kind of criminal conduct, and it is brought in a narrow range for people who use a firearm where the acts are serious, like murder or aggravated assault and battery or assault with intent to kill.

I suggest, Mr. Chairman, that what this subcommittee is doing today and what we are trying to initiate here is really long, long overdue, and my interest goes back many, many years really as a prosecuting attorney and as someone very much concerned with law enforcement. I think it is high time that the U.S. Senate takes the leadership to act on this matter and that our Senate Department seek to renegotiate the Vienna Convention to see to it that the kinds of criminal conduct and terrorism which we are concerned about today do not find an opportunity for being committed in a nation like Britain or a nation like the United States with those who are guilty simply then to walk away scot-free.

Thank you, Mr. Chairman.

[The prepared statement of Senator Specter follows:]

PREPARED STATEMENT OF SENATOR ARLEN SPECTER

Mr. Chairman, thank you very much for the opportunity to be here with you this morning. As you know, I am deeply concerned about international terrorism. Your subcommittee has provided outstanding leadership in this area and you deserve a large amount of credit. I look forward to continuing our work together to address this crucial national problem.

I am convinced that the United States must act rapidly and decisively to meet the threat of international terrorism. Recent events have driven home the urgency of this problem. Just 2 weeks ago, two Nigerian diplomats were implicated when a former Nigerian transport minister was found drugged and unconscious in a crate after being kidnaped in London. The crates were addressed to the Nigerian Foreign Ministry in Lagos. British authorities concluded that Nigerian diplomats were involved in the kidnaping and expelled them from the country.

Nor is the United States assured that it is immune from the threat of international terrorism. Consider the words of Libyan leader Muammar Qaddafi in a speech on June 11:

"We have no alternative but to resist America by every means. If we have to export terrorism, we will export terrorism to it. We are capable of exporting terrorism to the heart of America. We are also capable of physical liquidation, destruction, and arson inside America."

"The dogs of America," said Qaddafi, "will be killed."

Chilling statements such as these, along with the Nigerian incident in London and Italian reports of Bulgarian involvement in a papal assassination plot, highlight the need to combat state-sponsored violence. It is now clear that concerns about international terrorism are based not on paranoia, but on sober, pragmatic realism.

The hearing today concerns a new form of international terrorism: assassinations by hit men posing as diplomats and thus immune from prosecution. The nightmare of such murders recently became a reality in the machine gunning incident at the Libyan Embassy in London. According to news reports, Embassy personnel received electronic communications from Tripoli instructing them to shoot the Libyan dissidents demonstrating near the Embassy. The consequence, as the whole world knows, was that 11 students were injured and a British policewoman was killed. Since two of the suspects enjoyed full diplomatic immunity, however, British authorities allowed them to return home. The diplomat-terrorists got away with murder.

Article 31 of the convention states: "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state." The convention thus codified a tradition of many centuries. Diplomatic immunity has its roots in ancient China, India, and Egypt. As early as the thirteenth century B.C. Rameses II of Egypt negotiated a peace treaty concerning diplomatic privileges.

Centuries later, in 1961, 81 states convened a conference in response to an invitation by the United Nations General Assembly. The product of the conference was the Vienna Convention on Diplomatic Relations, which was signed on April 18, 1961, and became effective when ratified by 22 States on April 24, 1964. The Convention stands as the authoritative statement of the law on diplomatic privileges and immunities.

Diplomatic immunity has traditionally been defended on the assumption that the sending state would achieve justice in its own courts. Accordingly, the Vienna Convention provided that "The immunity of a diplomatic agent from the jurisdiction of the receiving state does not exempt him from the jurisdiction of the sending state."

Justice obviously will not be served, however, when the sending state has itself sponsored the terrorism. In these circumstances, criminals may be rewarded rather than prosecuted.

I have introduced two measures designed to address this problem. The first, S. 2771, would make it a Federal crime for a foreign diplomat to use a firearm to commit a felony. The second, S. Res. 395, would call on the President to renegotiate Article 31 of the Vienna Convention to eliminate immunity from arrest and prosecution for diplomats guilty of murder and other armed offenses.

I, of course, am not seeking a unilateral U.S. modification of the Vienna Convention. Although reform of the treaty is necessary, the United States must abide by our international obligations. The requirements of S. 2771 thus cannot become effective until the President renegotiates the terms of Article 31. I believe it important, however, to immediately begin our consideration of diplomatic immunity. Congressional exploration of this area will help clarify alternative approaches to renegotiating the Convention and will highlight the need for international action.

Critics of this proposal will argue that the present unqualified immunity protects American diplomats in hostile nations such as Eastern Block countries and the Soviet Union. With the revisions, it would still do so. Diplomats of all countries would be immune from prosecution for the sort of charges, such as espionage or fraud, that could readily be trumped up.

It is inconceivable that this country or any other law-abiding country would instruct or permit diplomats to use firearms to assault political opponents. Therefore, the revisions would not limit the proper functioning of our diplomatic agents. Armed assault charges such as murder by firearm cannot be readily brought on manufactured evidence.

Today fanantical and lawless states such as Iran, Syria, and Libya, may operate death squads all over the world under the cloak of diplomatic immunity. In my opinion, any state instructing diplomats to commit murder has so abused the concept of diplomatic immunity as to forfeit any claim to its protection.

Nor is it sufficient in the face of hit squads to argue that the receiving state can adequately protect itself by expelling the terrorist diplomat after the fact. He can and will simply be replaced by a new terrorist-diplomat. Assassinations will therefore continue.

Opponents may argue that revising the terms of immunity is insufficient to deter "diplomatic" murders by fanatical governments. This may be so in some cases. There is a great difference, however, between surreptitious assassinations by secret agents of a foreign power and overt shootings from embassy windows. Both are intolerable, but the latter makes the victim state compound the crime by forcing it to release the criminal.

For these reasons, I am hopeful that S. 2771 and S. Res. 395 will be subject to prompt action in the Senate. Nations must be put on notice that the world community will not tolerate state-sponsored terrorism.

Senator DENTON. Thank you, Senator Specter. Would you care to join us up here during the remainder of the hearings, and you would be welcome to ask questions.

Senator SPECTER. Yes; I accept the invitation, and I shall do so. Thank you.

Senator DENTON. I would have to say that Senator Specter earned his seat in the Senate not without consideration by his constituents for his performance as a district attorney in Philadelphia.

I would acknowledge that there is a difference between the perspective of a district attorney or an attorney general, for that matter, and the perspective of those in the State Department and in the foreign ministries of other nations, and we are going to hear some of that, I am sure, but I would, for purposes of clarity and unity of discussion, like to postulate one proposition to those who are going to testify with more expertise in the matter of diplomacy than either Senator Specter or I would claim.

And that is any resort to solutions such as further investigation into those hired in embassies to see if they have terroristic tendencies, or declaring them persona non grata after the fact of such an act, or even before the fact based on an investigation of their tendencies; or to breaking off relations with the nation do not appear to be valid deterrents in the case from which we are taking reference, and particularly in view of the ruler himself having ordered such violent acts or perhaps even more violent acts as other hearings might disclose.

So I do believe that we, for the sake of the civil rights of citizenries around the world, particularly our own, should take careful cognizance of the proposal to relook at the Vienna Convention with respect to this one area.

I am not sure that I share the full extent of Senator Specter's bent with respect to correcting or accommodating civil law or national law in the Vienna Convention, for example, in the driving situation, where the man is drunk. I would have to say maybe you can declare him persona non grata rather than make it a crime.

Some of the others, our Nation probably has little trouble understanding, rape, murder, and so on, and no punishment, and that to me is an open area for discussion, so perhaps the State Department witnesses would care to give us more enlightment than we now have as to the degree of freedom imparted by diplomatic immunity.

Certainly there are good reasons for it, and we do not want to destroy our or others' legitimate reasons for secrecy in diplomacy within the ranks of their own diplomats. And I do understand that the marines have diplomatic immunity insofar as they are considered to be functioning as extensions of the staff of the Ambassador, which is perhaps a slight modification to Senator Specter's statement that they do not have any diplomatic immunity.

But they certainly do not have immunity if they go out and get drunk and kill somebody in a bar.

We now have a panel led by Daniel W. McGovern, the Principal Deputy Legal Advisor to the Department of State. He is accompanied by Terrell E. Arnold, the Principal Deputy Director of the Office for Counter-Terrorism and Emergency Planning at the Department of State who has testified, in my view, brilliantly, at previous hearings here, and Robert E. Dalton, the Department's Assistant Legal Advisor for Treaty Affairs.

STATEMENTS OF DANIEL W. McGOVERN, PRINCIPAL DEPUTY LEGAL ADVISOR, ACCOMPANIED BY TERRELL E. ARNOLD, PRINCIPAL DEPUTY DIRECTOR, OFFICE FOR COUNTER-TERRORISM AND EMERGENCY PLANNING; ROBERT E. DALTON, ASSISTANT LEGAL ADVISOR FOR TREATY AFFAIRS; K.E. MALMBORG, JR., ASSISTANT LEGAL ADVISOR FOR MANAGEMENT· AND GORDON HARVEY, DEPUTY DIRECTOR, OFFICE OF SECURITY, DEPARTMENT OF STATE

Mr. McGOVERN. Thank you, Mr. Chairman.

Before I give my prepared statement, if I may be permitted a personal note to give you some idea of my background and the perspective that I bring to this matter. It is certainly an exceedingly complex matter and I recognize the careful thought and the serious spirit that you two Senators bring to this issue.

I am not a career diplomat. I am an appointee of this administration, and, in fact, like Senator Specter, my background is in criminal law. I began my career with the California attorney general's office in the criminal division, and then I had the honor to serve for 8 years as a senior research attorney for Justice William Clark on the California supreme court, responsible for preparing materials for Justice Clark in the criminal law area principally.

I approach this not only as a person who only lately comes to the diplomatic world but as a person who has a profound concern with the sorts of issues that you raise with regard to criminal law, and I also have a special interest, I suppose as a result of my prior background, in the fields that Senator Specter mentioned of international criminal cooperation.

I have negotiated a good many mutual legal assistance treaties and extradition treaties in the past 3 years, and I think that stands as one of the significant accomplishments of this administration.

In fact, the President signed an extradition treaty in Costa Rica. The Attorney General has signed a number of international criminal law enforcement instruments, a recognition that this administration at the highest level recognizes the importance of international criminal cooperation.

As you recognize, international terrorism and the related question of abuse of diplomatic privileges and immunities is an extremely complex question both factually and legally. No one has all of the answers, and I am personally not the master of all of the information in the possession of the Department of State nor am I the most expert person on certain specific areas that you may wish to address.

Therefore, in an effort to be as responsive as I possibly can be to your interests in this subject, I have asked to accompany me, sitting on my left, Mr. Terry Arnold, who is the Principal Deputy Director of the Office for Counter-Terrorism and Emergency Planning. Another gentleman whom we had not previously listed in our list of witnesses, Mr. Gordon Harvey, is at my extreme left. He is the Deputy Director of the Office of Security. On my right, as the chairman indicated, is Mr. Robert E. Dalton, who is the Assistant Legal Advisor for the Office of Treaty Affairs, and Mr. Dalton is especially conversant with the question of the Vienna Convention and its history.

We also have certain other members of our office who are in the audience, and with the chairman's permission, I may, upon occasion, call upon them to answer your questions if I feel that they can be more responsive and helpful than I can.

With your permission, I will read my prepared statement, and then, as a panel, we will be prepared to answer your questions.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before your subcommittee today to address S. 2771, a bill to protect the internal security of the United States against international terrorism by making it a Federal felony for a foreign diplomat in the United States to use a firearm to commit a felony. In recent months we have all become increasingly concerned about a relatively new aspect of the grave problem of international terrorism: The abuse of diplomatic privileges and immunities to aid and abet, or directly carry out, acts of terrorism. The leaders of the Summit Seven Nations referred to this problem in their declaration on the international terrorism, issued June 9 at the London Economic Summit. The declaration stated that these leaders, and I quote, "viewed with serious concern the increasing involvement of states and governments in acts of terrorism, including the abuse of diplomatic immunity. They acknowledged the inviolability of diplomatic missions and other requirements of international law; but they emphasized the obligations which that law also entails."

Certainly, a shocking recent incident of this type was the killing of a London policewoman by a shot fired from the Libyan "People's Bureau" in London on April 17. That incident gave rise to a reassessment in many quarters of the scope and function of diplomatic immunity and inviolability, including suggestions that the Vienna Convention on Diplomatic Relations, which sets forth basic international legal principles of diplomatic immunity and inviolability, be reopened for amendment, presumably with a view to narrowing the scope of those principles.

With this background in mind, we fully appreciate the concerns that led to the introduction of S. 2771. All those who have the responsibility for protecting our citizens, as well as those who are responsible for conducting foreign affairs, must, in the wake of recent events such as the Libyan shooting incident in London, reexamine the measures available to us for combating the serious menace of state-sponsored terrorism, and in particular that involving abuse of principles of diplomatic immunity and inviolability. Those of us in the executive branch who are concerned with such matters have been giving a great deal of attention, both unilaterally and in consultation with our allies, to ways in which we can strengthen our ability to protect ourselves against this sort of threat.

The question whether the process of amending the Vienna Convention should be undertaken is a very difficult one, and we have not yet taken a position on it. At this time I would simply sound a note of caution that experienced legislators like yourselves will readily understand: We should not enter into the process of amending the Vienna Convention unless we concluded—after a tough-minded assessment of the matter in light of the realities of the international political system today—that the result is very likely to be a net gain from our point of view.

The Vienna Convention, which was adopted by a diplomatic conference in 1961, was developed by the International Law Commission, a subsidiary body of the General Assembly of the United Nations charged with the codification and development of international law. The International Law Commission is presently developing draft articles dealing with the diplomatic pouch and the diplomatic courier that are intended to supplement the provisions on those subjects in the Vienna Convention. The thrust of the Commission's draft is to expand privileges and immunities and to make it more difficult for states to control abuse of the diplomatic pouch. We are trying to discourage this mischievous exercise, which is sponsored by Bulgaria and encouraged by the entire Eastern bloc.

Any initiatives that we might take to amend the Vienna Convention to cut back on privileges and immunities would be likely to be referred to the International Law Commission and linked with that body's work on the diplomatic pouch and diplomatic courier. If this were to happen, prospects are that an unsatisfactory draft would be sent to a diplomatic conference. The product of such a conference could well be a convention with which we could not live, and disintegration of the rules of the Vienna Convention that benefit the United States. Thus, again, I sound a note of caution in this regard.

There are, however, measures that can be undertaken now, which are consistent with the Vienna Convention and which may prove useful in reducing the potential for abuse of the privileges and immunities provided therein. The London Economic Summit Declaration on International Terrorism, issued June 9, 1984, noted that certain proposals had found support in the discussion. Perhaps most pertinent to the problem of abuse of diplomatic immunity were the following:

Closer cooperation and coordination between police and security organizations and other relevant authorities, especially in the exchange of information, intelligence and technical knowledge;

Use of the powers of the receiving state under the Vienna Convention in such matters as the size of diplomatic missions, and the number of buildings enjoying diplomatic immunity; and

Consultation and as far as possible cooperation over the expulsion from their countries of known terrorists, including persons of diplomatic status involved in terrorism.

With regard to another proposal stated in the declaration—scrutiny by each country of gaps in its national legislation which might be exploited by terrorists—this subcommittee is well aware, having held a hearing on it, that the administration has proposed a package of legislation designed to close some of the gaps in our domestic criminal law and to provide more effective means of combating international terrorism. We appreciate the strong support we have received from the chairman and members of this subcommittee and the spirit of creative cooperation you have shown in joining us in a search for legislative answers to what we all agree is a grave problem. It is in the same spirit that we have considered the bill before you today.

With respect, Mr. Chairman, we do have serious reservations about the particular approach reflected in this bill. Although the bill does not say that it repeals diplomatic immunity in cases in which diplomats use firearms to commit felonies, it does undercut the principle of absolute criminal immunity for diplomats. The bill could thus provide an occasion—or a pretext—for foreign governments to retaliate by exposing our diplomatic personnel abroad to criminal liability. Article 47(2)(a) of the Convention permits a state to apply any of the Convention's provisions restrictively to foreign diplomatic personnel on a basis of reciprocity. Therefore, any narrowing of the scope of criminal immunity afforded to foreign diplomats in the United States could provide a rationale under the Vienna Convention for foreign governments to take similar measures with respect to our personnel stationed in their jurisdiction. I am sure this subcommittee need not be reminded that many foreign states in which our diplomats serve do not guarantee the same standards of due process we take for granted in America. Considerations such as this underlie the principle of absolute criminal immunity for diplomats, a principle of both international and domestic law which our country has observed faithfully since its beginnings. We could not in good conscience send our people and their dependents overseas without the protection that they derive from this important principle.

Because of this potential for retaliation, the bill presents a real, though obviously unintended, risk to our efforts to protect U.S. Government employees overseas against terrorist attack. We now have an extensive program of security protection for our people overseas, involving officers of the State Department Office of Security as well as the marine guard detachments at well over 100 posts around the world.

And at this point, I will depart just momentarily from my prepared text to point out, as Senator Denton did, that the marines of whom I am speaking in my statement are the marines who are assigned as marine guards in the Embassy rather than our marine forces who were present in Lebanon.

The marine guards in the Embassy, as Senator Denton indicated, do have the protection of diplomatic immunity. Marines and State Department security officers who provide such protection are armed and have authorization to use their weapons in extremely threatening situations.

Senator **Denton**. Excuse me, Mr. McGovern, if I may interject a question here for clarity because I do not want it to get lost. The marines assigned in the Embassies, you say they have diplomatic immunity. It was my previous understanding that they had it only insofar as they were functioning as extensions of the Ambassador's staff and that outside in a bar or in driving that would not be the case. If that is incorrect, I want to correct my own impression.

Mr. McGovern. Certainly, and first let me say that as my statement goes on to point out, the circumstances that I am directly addressing here are instances in which I expect that they might be called upon to use their weapon in the course of their regular functions. But let me give Mr. Dalton an opportunity to more thoroughly explain.

Senator Denton. I will be glad to wait for that, but I do want to understand the full coverage of diplomatic immunity extended to the marines in an Embassy.

Mr. McGovern. Fine, we will address that at the beginning of the questioning period.

Returning to my prepared statement; if diplomatic immunity were to be cut back under a measure such as S. 2771 in other countries, a marine guard who discharged his weapon in the line of duty to protect his own life or the life of a threatened American diplomat would be in jeopardy of criminal prosecution in a foreign tribunal.

We cannot assume that the defense of self-defense as we understand it is recognized in all legal systems. Nor—given the political influence that can be brought to bear upon the judicial process, not to mention the exercise of prosecutorial discretion in some countries—can we assume that a well-founded defense of self-defense would necessarily prevail. Indeed, it is entirely conceivable that an attack leading a marine to react in self-defense might be inspired and directed by the host government, an act of state terrorism. And even if ultimately acquitted, the marine would have suffered collateral consequences of criminal prosecution including, possibly, a long period of pretrial detention under conditions and subject to treatment we would consider cruel and unusual.

The detrimental effect of such a prospect on the readiness of our marines and security officers to provide effective protection in an emergency can easily be imagined. We are already asking these individuals to risk their lives to protect those under their care. Should we also ask them to assume the risk of criminal prosecution under the circumstances I have just outlined? I submit that we should not. And, to repeat, I further submit that considerations such as these underlie the decision of the international community that diplomats much have absolute criminal immunity.

A review of our own experience as a host state over the last decade has turned up only one case in which a person entitled to diplomatic immunity, the son of an ambassador, used a firearm to commit a crime. He was required to leave the United States. During approximately the same period, there have been at least two cases involving our personnel abroad. In both of those cases, prosecution for the crime took place in the United States rather than in the country where the crime occurred.

Senator Specter. In the case where the son of a diplomat was required to return home, did his home state prosecute him?

Mr. McGovern. I do not know the answer to that question, Senator Specter. I will ask my colleagues when we come to the question period if they know the answer, but I do not know the answer.

Senator SPECTER. Well, let us find out now. Anybody know the answer to it? It seems to me that it is important if justice was done in the case.

Mr. MALMBORG. I knew that question would appeal to your heart because I was agonizing with you when you were trying to prosecute that sailor. No; they did not prosecute.

Senator SPECTER. Well, I am not surprised. What is the justification, Mr. McGovern, for extending diplomatic immunity to the son of a diplomat?

Mr. MCGOVERN. Mr. Dalton.

Senator SPECTER. What diplomatic pursuits does the son engage in?

Mr. DALTON. The theory, Senator, is that the immunities under the Convention which are provided to diplomats are also provided to members of the family who are not nationals of the receiving state, and the reason for that is it is thought that a prosecution of, say, an ambassador's wife for a crime would have the same foreign affairs adverse effects as the prosecution of an ambassador.

Senator SPECTER. Why?

Mr. DALTON. Why? Mr. McGovern's testimony indicated to you, for example, that if one did not have immunity from criminal jurisdiction, say, for marines that marines might be prosecuted.

Senator SPECTER. What marines are you talking about? The ones in Lebanon?

Mr. DALTON. No. The ones in the Embassy. People who are parts of a diplomatic mission who happen to be marines.

Senator SPECTER. Do marines enjoy diplomatic immunity?

Mr. DALTON. Yes. Under article 37(2) of the Vienna Convention, they are exempt from criminal prosecution in the state in which they serve.

Senator DENTON. So to clarify my previous question, then, any marine assigned to the Embassy on guard duty is as immune as any diplomat——

Mr. DALTON. From criminal jurisdiction, yes.

Senator DENTON [continuing]. 365 days a year, 24 hours a day.

Mr. DALTON. Yes.

Senator DENTON. Not just insofar as he is or she is performing her duties as an extension of the Embassy staff.

Mr. DALTON. That appears to be what article 37(2) of the Vienna Convention says.

Senator DENTON. Since "that appears" is used, I will look further into it or maybe you can, because I would like to get that absolutely clear.

Mr. DALTON. All right, Mr. Chairman. We will provide you a written paper on this question.

Senator DENTON. That will not be necessary. You can give me a one sentence if you finally decide it is an absolute diplomatic immunity 24 hours a day regardless of what they are doing, I will accept that. I am not trying to be a pest here.

To add some light on what Senator Specter is getting at about whether or not the person was prosecuted in his own country and to amplify the significance, get at the significance of what Mr. McGovern is now talking about, we have a report here from the British, dated June 12, 1980, which was part of the input to the consideration by Parliament which we referred to earlier and included as part of the record.

They give the following statistics which are pertinent to the present context of discussion. They talk about the number of occasions on which persons entitled to diplomatic immunity have escaped arrest or prosecution in the period 1974 to 1984, and they take four categories of sexual offenses, one category of firearms offense, and then other offenses.

And I would just, for all of our information, since even the State Department officials may not be aware, give you a few excerpts. In terms of sexual offenses, taking rape, which happens to be section 1 of Britain's Sexual Offenses Act of 1956. Rape, there was one case in 1977 and one case in 1980. Gross indecency, there was one case each in 1974, 1975, 1976, 1977, 1980, 1982, and two cases in 1983.

Indecent assault: One in 1977, one in 1979, and one in 1984. The unlawful possession of a firearm under their Firearms Act of 1968, there were two offenses in 1974, one in 1977, one in 1980, and one in 1982.

The assaults, including assaults on individuals, occurred in 1975, 1976, one each; 1977, two each; 1979, three; 1981, two; 1982, three; 1983, one; and none on record so far this year.

Assaults of a police officer: There were two each in 1975, 1976, 1982, 1983, and one each in the intervening years between 1977 and 1982. Road traffic deaths by reckless driving, they go into that. Reckless driving, driving under the influence of drink and drugs. This averages about 20 a year for every year there.

And they have 102,000 fixed penalty notices canceled on ground of diplomatic immunity between 1974 and 1983. They include minor offenses as well as major offenses.

So we are into an interesting area, particularly when the ruler of a nation gives orders to commit terroristic acts, and I might as well say at this point that three solutions you mentioned, closer cooperation between police and security organizations, use of the powers of the receiving state under the Vienna Convention in such matters as the size of the missions and the number of buildings enjoying diplomatic immunity, and third, expulsion from their countries of known terrorists, appear to me not to satisfy, I admit, the one situation in which Qadhafi, and the man were involved. It would only take one man, one building, one ruler like Qadhafi, and you are going to have some innocent victims, perhaps hundreds of innocent victims.

We have narcotics and nuclear considerations here that are brand new, involved with certain Nicaraguans who have undergone allegations and attempts to bring them to trial in Canada, ongoing now.

We have just had the Soviet-Swiss involvement with the big truck in which they wanted to consider it a diplomatic pouch. I think it is about time we look at this thing and we looked at it without the sophistication in the true sense of the word which attends diplomatic relations in a more civilized era.

So the curve ball you guys seem to have thrown here starts off with saying you consider the question of amending the Vienna Convention a very difficult one but you have not yet taken a position on it.

Then you say your position depends on whether or not a tough-minded assessment of amending it would have a net gain or loss from our point of view. And then the curve ball breaks and says you do not think it would have a net gain from our point of view, and yet the answers you give, in my view, are not appropriate to the problem.

You say that you have serious reservations. Then you say foreign governments could retaliate by exposing our diplomatic personnel abroad to criminal liability. You mention the self-defense problem being different in other countries. You mention, and all of these are good points, about the agency involved which has to look this over is a U.N. one which is not likely to come up with a satisfactory answer from our point of view, the International Law Commission and you are already trying to prevent them from a mischievous exercise in which they would liberalize in favor of terrorism or whatever the present convention.

I believe, gentlemen, that much of the liberal/conservative, Democratic/Republican, if you will, split as regards our perspective on Central America, the Mideast, terrorism in general would disappear, as it should, if we were to have a confrontation legalistically about this and expose that which is going on.

I cannot believe that common sense, common decency, and common law would not require the kind of corrections that we have in mind, and if they can do what they did in Iran, granted it might not be directly relevant in that we may not have had diplomatic relations with that revolutionary government, but if Qadhafi can be giving the kind of orders he is giving, if Castro can be expediting drug traffic into the United States, which we have proved, if Nicaragua is involved in cocaine profits, if one insurgent Communist group in Columbia is making $100 million a year in drug extortion money, and we are fighting to give a few hundred million dollars to the entire area down there to protect freedom, let this all be known.

Let us get into whether or not these are good guys down in the Sandinista government or whether Bulgaria is that ordinary a country or whether she is not a principal dirty player in the dirty hardball that the bad guys are playing around the world against the United States.

And you might not see two identical hands in the Washington Post, one the United States, one Soviet pushing missiles toward one another with the only distinction being the insignia on their sleeves. That is absurd. We do not have two equally obnoxious superpowers.

Our country with all its laws is the best one ever to come down the pike by anybody's standard, including the captors I had candid conversations with in Vietnam, but they are taking advantage of us, and I agree with Senator Specter when he says we need to take aggressive action to show that we understand what our rights are, what our citizens' rights are, what the rights of humanity are, and that we ought to go ahead and stand up to it rather than continue to play tea and crumpets as if we were still dealing with civilized nations around the world.

I am sorry for that interruption, but it is what is in my heart, and I wanted it said.

Senator SPECTER. Mr. Chairman, if I might just pursue one question. I can understand the marines who are on guard duty having diplomatic immunity since they are working in furtherance of the diplomats there.

But why the diplomat's son? Why the diplomat's wife?

Mr. MCGOVERN. I think, Senator, though I frankly admit my own rather shallow background in this area, if I could begin to try to address your question, I think that one consideration is that the diplomat's wife and the diplomat's son are as subject to the possibility of unfounded and extortionate charges and the abuse of the criminal process as is the diplomat himself, and they are a way of getting at the diplomat.

Senator SPECTER. Well, what is the experience on that? Have there been any efforts made for unfounded or extortionate charges against families, sons, or wives of diplomats?

Mr. MCGOVERN. Well, as we now have the absolute criminal immunity, it is difficult to say what our experience would be because it is not possible, consistent with the convention, for such charges to be brought, but I think our recent experiences, for example, newspaper headlines that we have seen recently with regard to incidents in the Soviet Union and the roughing up of our diplomats there indicate that, as Senator Denton rightly points out, there are countries that do not play the game by the same rules. The countries, in fact, that use international fora like the United Nations to create a system of rules that they clearly intend to abuse.

And I think that there is a very real possibility that by opening up the possibility of criminal prosecution for firearm offenses we would see some other countries using the possibility of reciprocal restriction of diplomatic immunity to take advantage of the opportunity to charge our diplomats with unfounded crimes and therefore to significantly cut into their ability to effectively represent the interests of the United States.

I think that is just as real a concern and a likely possibility as the very real problems that you have pointed out happening in the United States.

Senator SPECTER. Well, Mr. McGovern, I hear you but I cannot agree with you. They rough up our diplomats while we observe the diplomatic immunity. They are not playing according to any rules to favor them.

When you talk about extortionate demands, public prosecutors, as you well know, have to approve a criminal prosecution. Somebody cannot go out and arrest a diplomat's wife or son in Washington, DC, without going to the U.S. attorney, and there is a dispassionate review by a quasi-judicial official.

How can there be an extortionate arrest of a diplomat's son or a diplomat's wife?

Mr. MCGOVERN. Senator Specter, I will frankly say to you I am not concerned with the possibility of abuse of that sort occurring by the U.S. prosecutorial officials. That is not my concern. My concern is that reciprocally we will find those kinds of abuses occurring abroad with regard to our diplomats. I do not expect that if this bill were put into effect in the United States that we would see prosecutors or judges acting inappropriately.

Senator Specter. Well, you talk about marines. What is our experience about marines on Embassy posts firing their weapons? Do we have many such cases?

Mr. McGovern. Well, let me give Mr. Arnold, who is the Principal Deputy Director of the Office for Combatting Terrorism, the opportunity to respond to that question.

Mr. Arnold. Senator, I would like to talk briefly to the previous question.

Senator Specter. Well, would you start with my question, and then talk to the previous one.

Mr. Arnold. We do not have a large number of incidences of our marines using their weapons for any purpose.

Senator Specter. Any?

Mr. Arnold. Any purpose. There have been some.

Senator Specter. How many?

Mr. Arnold. I am not in a position to answer that statistically. Maybe Gordon Harvey is, but it is a very infrequent occurrence.

Senator Specter. When was the last one that you recollect?

Mr. Harvey. I cannot recall, Senator Specter, a specific incident where the marine took a weapon with him when he went into the community and used it.

Senator Specter. See, what I am concerned about is erecting bogeymen, that marines are going to be prosecuted for using their weapons when we do not have any factual basis for marines having used their weapons so that it is going to require some sort of defense.

And I am not persuaded that some foreign nation is going to concoct one any more than they will seize somebody without the reciprocal issue.

Mr. McGovern. If I may interject just a moment, Senator, I appreciate your desire to see to it that we are talking about real problems here and not phantoms. I do not think, though, that we are talking about bogeymen.

The attack upon our Embassy in Tehran, as well as the attacks upon our embassies following that incident showed that just as the problem of state terrorism is a problem that we are grappling with today, one aspect of that problem is the attack upon our diplomatic personnel abroad.

It's almost unprecedented that this sort of thing would have happened a decade ago, but it is happening now, and I think we can anticipate that it is going to happen with increasing frequency.

Senator Specter. But that is precisely the point. They take our Embassy in Iran not by way of any reciprocal action because we are locking up murderers here, they just do it. They do not need any reciprocity excuse to do that, if they choose to.

Mr. Arnold. Senator, that gets us to the much larger problem that your bill addresses, and I think we need to discuss that a little bit. The true problem here is not the issue of weapons and their use or the specific issue of a given violation of privileges extended under the Vienna Convention.

But the basic question is states that choose to go outside the normal of international behavior, international laws, if we may be privileged to call them that, and behave in an outlaw fashion.

I have not yet seen in attempting to deal with this kind of a problem a fundamental difference between our basic problem of dealing with the criminal element within our own society.

We first struggle with the issue of how we are going to go about getting that person or that group back into line with the norms—but a state that is resorting to assassination or kidnaping or hostage taking or hijacking acts of terrorism, a state that is supporting acts of international terrorism and among other things using the facilities of diplomacy to assist in that activity, or a state that is violating diplomatic privileges in a direct way is behaving in an outlaw manner. It poses a special kind of challenge to us as a democratic society with rules on the protection of civil liberties as an international state, a respectable state, seeking therefore to maintain the norms of international behavior we are especially challenged by this kind of a problem.

There is not an easy answer to it. We bring to bear all of the diplomatic and political sanctions that we can bring to bear in order to cause a state that is behaving in this fashion to get back in line with the norms.

If we fail on that, our options are not very good because, unless we are prepared to abandon the values and the norms of our institutions, we are severely limited. I think diplomatic privileges in the international sense pose a particularly stark example of this problem for us, but it is immensely difficult to deal with it without damaging the institution that you know you have an immense investment in preserving, and I think that's exactly where we are, a very difficult problem.

I very much appreciate the thought and effort that you are putting into trying to deal with it. I do not envy you your task.

Senator DENTON. Mr. Arnold, we have not begun to paint what we consider to be the bigger picture here. You all have several times said there is something bigger involved. I think there is something bigger involved than we have discussed yet.

I do not believe the Soviet Union would be foolish enough to call upon its surrogates or those over whom it has influence and contest or make a big fuss or counterproductive effort which derives from trying to correct what happened in London.

I think they would be fools to do so. I think they know they would be fools to do so, and that, to me, knocks the pins out from under what you gentlemen are really getting at.

I do not believe they are that dumb. I think they are much more sophisticated in psychological warfare, much more aware that world opinion is something which they want to play favorably upon.

They would lose so many allies in the media around the world who, in good will, concentrate more upon our own flaws because that is the good of journalism which is to force the United States toward realization and behavior of the principles our Founding Fathers laid down, both nationally and internationally.

And so I do not really fault the media for that, but they have gone overboard. They do not realize how many orders of magnitude more evil than our flaws have evidenced us to be, at times and in some ways is this other system which is so really threatening our survival and the survival of our interests around the world and eroding them so much as they have already.

I do not believe the Soviets would be fool enough and I do not believe Libya could make or any other nation could make a big case out of tearing the Vienna Convention apart simply because we want to stop some nut from going out a window with a machinegun on the direct orders of his ruler and blasting people away. I just do not see that argument.

Mr. McGOVERN. Senator Denton, if I could pose what seems to me to be a likely reaction of the Soviet Union, if we were to have this bill, they may well, for example, have a response which they would characterize as being in the same vein, making it unlawful for a diplomat to carry a weapon.

Now, I think that might clearly handicap our people in their ability to protect themselves.

Senator DENTON. But do you not see that the world would not buy that? The United States would not buy that. The liberals in the United States would not buy that. They would lose ground on that. Yes, those tricks are all available to them, but I agree with Senator Specter. I think they are bogeymen.

Mr. McGOVERN. Well, you are clearly reasonable men who are terribly concerned with this problem, and I hope that you will concede that we are both reasonable and equally concerned, and this appears to be one upon which reasonable men differ.

I think that there would likely be that kind of reaction and the desire to choose pretexts as occasions arose or as our relations with the Soviet Union waxed or waned to accuse our diplomats falsely and to abuse them in that respect.

Senator DENTON. Well, they can already do that, though, Mr. McGovern. That is running through everybody's minds. They have done that in Iran. They can do it anytime they want to.

The point is whether or not they can be deterred from it. If we give them good reason to desist from doing that in terms of world opinion and/or reaction on our part in terms of prosecution within this country, then they will stop. They are not after any kind of a compassionate justice end. They are after advantage.

Mr. McGOVERN. I do not disagree with you, Senator, and I take the point that Senator Specter made that it is always possible that an outlaw nation will do something of this sort anyway, and some already have.

But we have been able to insist on those occasions that they were clearly acting outside of the law and of the Vienna Convention. If we were to give them the opportunity to begin criminal prosecutions, it would be much easier for them to camouflage improper conduct under the guise of upholding their internal domestic law, and I think that that is a real possibility.

Senator DENTON. Mr. McGovern, there is a built-in feeling within the Senate, some aspects of which I deplore. Let us depart totally from the United Nations. We have proposed certain senses of the Senate resolutions which are in that direction. To bring to public exposure the International Law Commission's trends and thrusts I do not think would be bad.

I think they would have to back down from that. We are taking the position that if we do anything that tempts them to get even sillier or meaner, they are going to do it. Therefore, we cannot stick up for our just rights. It seems to me that that is it.

Now, do not take my excitement for indignation against the State Department. I admit I do not know, as I said when I started, all the ifs, ands, and buts about this, but I am not entirely unschooled in this myself in the confrontation between the East and West even in its diplomatic aspects.

I was offered, through the Chief of Naval Operations, the job of national security adviser to the President, two or three members of which you are very familiar with. Brent Scowcroft was a man I would have replaced had I accepted that invitation. I did not accept for reasons I will not bore you with.

But I do believe that we are making an error when we think of all the possible things on the horizon that could come up were we to take some commonsense action that the entire public of the United States and the world, to the degree that they are free to express themselves, would agree with.

I think that is the wrong premise from which to depart.

Mr. McGOVERN. I take your point, Senator, and I want to emphasize again that this administration and the State Department has not taken a position on this question and certainly our internal deliberations will be and should be influenced by the hearing that you have held and the sentiments that you have expressed.

I feel that it is my responsibility as the lawyer to the State Department to point out some of the problems that might arise, but it is very often the case that a lawyer after pointing out some of the risks, will find that his client for good reason says, "Fine. Let us go ahead and assume those risks. The gain is worth the candle."

So I simply want to point out to you as I would to my client that it is not absolutely clear that if we engage in the process of amendment that we will necessarily find that the final product will be a convention that cuts back on privileges and immunities. It might be a convention that expands them.

Senator DENTON. That is a generous statement, and one which is characteristic of the good will you are showing here. In return, let me say that my mind is still open, too. I am propounding a side which I feel, but I do not feel any omniscience in propounding it, but I do have a deep feeling that something like what I have been saying must be said in consideration of what we are confronting there.

Would you mind going ahead with the remainder of your statement? You were almost finished, and I apologize for our long interruption.

Mr. McGOVERN. I will simply summarize by saying that the considerations that we have pointed out make us believe that, on balance, the system created by the Vienna Convention may well be the most consistent with our interests as a global power with representation in every corner of the world.

We believe that the enactment of S. 2771 would weaken those interests, but as I indicated earlier, we want to continue to consult with our allies and certainly we consider that among our allies is the U.S. Senate, and we want to have the opportunity to have a continuing dialog on this problem as we do on every aspect of international terrorism, and we look forward to that.

That is the end of my statement.

Senator DENTON. Thank you, sir.

I am going to defer to Senator Specter. I will submit any further questions which I may have in writing, but I defer because of his extraordinary interest and stepping out of the normal duties which are sufficient to keep us all overoccupied.

I want you to know that I normally defer to the State Department. I do not like 535 Secretaries of State, and all of my colleagues have heard me say that in closed and open forum.

But I do believe that this is in the true separation of powers something which we both ought to express ourselves on to some degree, and I appreciate what you said about still being open-minded.

Senator Specter.

Senator SPECTER. As a legal proposition, would S. 2771 not be subject to enactment until the Vienna Convention of 1961 was modified?

Mr. McGOVERN. I think as a legal proposition, one could enact 2771, and it would override our current obligations under the Vienna Convention as the later expression of the legislative will.

Senator SPECTER. What is the mood of the British Government toward modifying the Vienna Convention in the light of announcement which came from the Thatcher government about wanting to do something on this subject?

Mr. McGOVERN. I believe that the British Government, and I have not myself spoken to representatives of the British Government at the policy level, but it is my understanding that they have this matter under active consideration.

Senator SPECTER. Well, I know they have it under active consideration, but I would like to know, I think the subcommittee would like to know something more than that. Would you make an effort to find out what they are thinking about and whether they would be receptive to joining with the United States in trying to stop repetitions of the Libyan terrorism which resulted in the murder of the policewoman?

Mr. McGOVERN. Certainly I will. I know that they are probably more concerned than any government because they have been the victim of the most recent and most shocking incidents of this sort, and we will take an opportunity to try to find out with specific respect to the amendment of the convention what their current policy position is.

Mr. Arnold would like to address you for just a moment.

Mr. ARNOLD. One area that is under active discussion, Senator, is that area of what within the existing rules of the Vienna Convention can a receiving state do through interpretation of its obligations under the Convention.

That really is a question that gets to the heart of the issue raised by Mr. McGovern when he said that this was a special kind of problem for international cooperation. But with a convention like this or with an international institutional framework like this, if you do not have the active, willing support of a large number of states, you just do not get anywhere.

But if we were in agreement, a large number of states, that the obligations of the receiving state are more restrictive than they have up to now been interpreted, that might go a good step in the right direction.

Senator **Specter**. What are you talking about—the obligations of a receiving state? What do you mean?

Mr. **Arnold**. I think lawyers can talk better to this than I can, but in principle, what I am saying is, every state has a view of what its obligations are under this convention, and mostly we are agreed on what our obligations collectively as a community are.

But what things such as the "People's Bureau" case in London are causing many governments to do is examine whether or not specifically they should not be more conservative in the way they interpret these obligations, and I think that is an active question.

Senator **Specter**. What are you talking about? You are going to prosecute somebody who terroristically murders a policewoman?

Mr. **Arnold**. I do not think that kind of a case is probably easier to arrive at a view than the great majority of cases that Mr. McGovern has talked about.

Senator **Specter**. Well, what is your view of that case?

Mr. **Arnold**. I do not think in anybody's view there is a question that that was a violation of diplomatic privilege. It was.

Senator **Specter**. Well, then, why not change the rules of diplomatic privilege so that we do not permit that kind of a murderer to leave the receiving state?

Mr. **Arnold**. Then you have to change the basic rules on immunity from criminal prosecution which is the center, it seems to me, of Mr. McGovern's main comments.

Mr. **McGovern**. Senator Specter, Mr. Arnold was talking about the effort that is going on and should continue to go on to examine the Vienna Convention in terms of our current practices under it, and with regard to tightening up, perhaps, under the Vienna Convention——

Senator **Specter**. Like what?

Mr. **McGovern**. Well, I recognize the pertinence of your question, and I was going to suggest that one thing that is explicitly mentioned in the economic summit declaration is the size of diplomatic missions.

Now, I think that there may well be in some quarters the feeling that the sending state can say how many people they want to have and that they are the sole and only proper judge of the appropriate size of their mission.

Senator **Specter**. I understand that.

Mr. Arnold, is that what you were talking about by a more conservative approach by the receiving state?

Mr. **Arnold**. That is one subject, but that need not be the end of it, and I do not think it will be.

Senator **Specter**. I do not consider that kind of a modification to go very far at all. What is another illustration?

Mr. **McGovern**. Well, if I could first explain why I think that that kind of modification may have some bite here——

Senator **Specter**. Well, would you first answer my question? I am going to have to go soon. I do not really feel, gentlemen, that we are really getting down to the basic kind of a problem we have here in terms of where you stand on it or what the factual basis is for your concern. What other alternatives do you have beyond limiting the size of the mission?

Mr. McGOVERN. As the summit declaration pointed out, you can have better intelligence sharing among nations as to people who have created problems in one of the receiving nations in the past.

Senator SPECTER. What else?

Mr. McGOVERN. You can keep out known troublemakers, for example.

Senator SPECTER. What else?

Mr. McGOVERN. Well, I think there are a number of things that are under consideration, and I would be most happy if, perhaps, our office for combating terrorism could give the Senate or you, Senator, a briefing on that point at some time.

Senator SPECTER. Are you suggesting that is confidential and cannot be discussed now?

Mr. McGOVERN. I think there are some of the things that we are doing that should not be discussed in open session, yes.

Senator SPECTER. What factual basis is there for the concern which you have expressed repeatedly here that should we take action like 2771, that there would be some retaliation by some foreign nations? Is there anything more than supposition?

Mr. DALTON. I think, Senator, if you look at international practice as it really is, states using the Vienna Convention persona non grata diplomats who are doing improper things in the country in which they are assigned. Somehow or other there seems to be within the next 6 weeks in a case in which the other country finds an occasion to get rid of the sending state's diplomats.

So there is a certain amount of tit-for-tat despite the rules in the Vienna Convention, and on getting rid of the diplomat, the rule in the Vienna Convention is sufficiently broad so you can do that, so that you can basically send the diplomat home for any reason.

We send a diplomat home when he misbehaves, and it is not uncommon that reciprocally a foreign state sends a diplomat home just for policy reasons.

Senator SPECTER. OK. I can understand that you would then say that if we acted against a murderer that they would; or are you then saying that, because of that and that alone, that if we acted against a murderer that they would frame one of our diplomats for murder?

Mr. DALTON. No; I am not saying that. I am saying that there——

Senator SPECTER. Well, do you have any basis for expecting action by a foreign government on our prosecution of a murderer than their expelling someone for no cause when we have expelled someone for just cause?

Mr. DALTON. I think that states are sensitive about certain kinds of activity that affect the state that may be committed by diplomats. I mean, we are not concerned, say, about murder or your hypothetical is concerned about murder. Your bill is concerned about the use of firearms.

The roles in the Vienna Convention on reciprocity do not require that a state that believes its interests may be affected in that way has to change its law or is free to change its law with respect to firearms.

It can be free to derogate in another manner from the Vienna Convention. There may be kinds of crimes that a state might decide it wished to change its law and make an exception to the Vienna Convention in the same way in which you want to change your law in respect of firearms being used in the commission of a felony.

Senator SPECTER. So a Western diplomat who wore a double-breasted suit could be imprisoned for life?

Mr. DALTON. I think that most persons who conduct criminal and international affairs are more inventive, Senator.

Senator SPECTER. Give me an example.

Mr. DALTON. Well, you will recall at the time of the seizing of the Embassy in Iran that the Iranians said that they were going to prosecute members of the Embassy staff, and that case, as you will recall, the United States took to the International Court of Justice.

The Iranians came in and said, "Well, the Vienna Convention does not apply, and this is a matter of fundamental concern to the state and we can prosecute these people." The Court said the Vienna Convention did apply, that diplomats were immune and it did not matter what crime you accuse them of, they were immune under the Convention and could not be prosecuted, and the court said that unanimously.

Senator SPECTER. The question was, what would be an example of a foreign nation responding to our prosecuting a murder by some change in their criminal law to prosecute an American diplomat?

Mr. MCGOVERN. I think——

Senator SPECTER. I would like to have an answer to the question.

Mr. MCGOVERN. Well, I am about to try to give one, Senator. I think an example would be spying. I think that many nations would say that the gravest crime against the integrity of the nation is espionage and would likely try American diplomats in foreign jurisdiction on charges of spying.

And, of course, we read very frequently in the newspapers that exactly those sorts of charges are made against American diplomats in Eastern bloc nations. I think that they might—for example, the charges made against American diplomats in Russia recently that by talking to dissidents that they were acting against the security of the state.

Senator SPECTER. Are our diplomats always accorded diplomatic immunity when a foreign government brings a charge of spying?

Mr. MCGOVERN. Yes.

Senator SPECTER. Is there any case where a U.S. diplomat had been prosecuted for spying?

Mr. MCGOVERN. I am not aware of any case where that charge has been brought in the courts of another nation against an American diplomat. But, as Mr. Arnold points out to me expulsions, persona non grata, is a common response to that kind of perceived problem.

Senator SPECTER. And expelled?

Mr. MCGOVERN. And expelled.

Senator SPECTER. Well, I would think that if you are concerned about reciprocal action by the foreign governments that if they are to stay reciprocal, they would be dealing with cases involving a firearm, involving murder or assault and battery or aggravated assault and battery or assault with intent to kill.

Mr. McGOVERN. If they were to stay completely reciprocal, they would be. I do not think that it is necessarily the case that they would be completely reciprocal.

Senator DENTON. If the Senator would yield, I believe the Soviet Union would have a lot more to lose, and the other nations which have diplomats—including all over the United Nations—that are truly conducting espionage and other types of activity not covered by their formal missions than we would, if they were to get into that kind of a ballgame. That is what I cannot understand in your line of reasoning.

Mr. McGOVERN. Well, it is a high-risk game, and I do not know how they would come out on that. It is very hard to predict. The Soviet Union's behavior sometimes is much more predictable than some of their client states who are real freelance artists as you recognize—how a North Korea might react, how some other state that gets its directions ultimately from the Soviet Union might react is a little harder to predict and causes me somewhat more concern.

Senator SPECTER. Thank you very much, Mr. Chairman.

Senator DENTON. I do not think we have formal diplomatic relations with North Korea. So I do not know about the effect on the diplomats there. I would say that they are more responsive. This is my feeling from what I know about it. I would say the North Koreans are more responsive to Soviet suggestions than, say, Libya might be, although we know that there is an East bloc gentleman in charge of their intelligence operation, Marcus Wolff.

I guess Mr. Arnold knows some of this stuff, but the thing that drives me up the wall is the interrelationship of all of these factors, diplomatic, terroristic, the possibility of nuclear war, limited war, all the disguised aggressions that take place in the world, they are all tied up together, and I tend to rebel at such a deference being extended on the basis of possible, theoretically possible, postulations.

I agree they are possible. I just think, and I agree with your major thesis that we should do this one way or another depending on whether it is a net gain or loss to us. But in that consideration, I think we should not just deal only with these possibilities in the diplomatic area.

I think there is much more involved. I think personally that since about 1970 the United States has shown the world, to our detriment, that we are not aware of what our interests are, and what needs to be done to protect them, and that that has led to a great deal of problems not only with our enemies but with many of our friends.

And this would be an example where, although it might be symbolic, the United States would have a just cause and in spite of recognized dangers, the risk, in my view, would be in our favor.

The overall rolling of the dice would favor a favorable outcome rather than unfavorable. And that is still my belief.

I wanted to let you all know and get in the record that we invited Libyans to testify at these hearings, for example. If they want to threaten this or that, they could have come. We invited the Libyan U.N. mission in New York, and they did not respond. I will be asking Dr. Sicker, our next witness, and Senator Specter says he has to leave. I am going to have to stay and conduct the rest of the hearing, Senator Specter, that is why I am submitting some of these questions for Dr. Sicker in writing. He is a student of Qadhafi's psyche, and I will be asking him if he will shed some expertise on what he thinks of Qadhafi, how he fits into this thing and what he believes about the consequences were we to implement this legislative proposal.

We all should be and I do not see how we can be unemotionally involved in this question which finds us at disadvantages around the world, such as Africa, the Mideast, Latin America, a position in which we have never found ourselves.

I believe that we have a tremendous danger pending in terms of what could be a greatly changed military situation in Central America if we do not do the right things, things which the State Department is proposing that we do, and the Kissinger Commission proposed that we do, and the President is proposing that we do.

You do not have to hear what I have heard on the Senate floor and in committee as we discuss these things. If you did, perhaps you could evaluate better the proposal I made to let us bring this all out in the open. Let us go ahead and make an issue of this. I do not think it would poison our diplomatic fate, but it might shed refreshing light on what the United Nations is, what the international commission you referred to is, and what is going on in Colombia, Nicaragua, and so on.

Thank you very much, gentlemen, for coming this morning. We hope you will respond to any written questions we may send to you and feel free to, you know, if you think you have something that will enlighten me or dispel any of my concerns or make me more informed so we can more intelligently approach this; please feel free to tell me as you have candidly done today.

And I thank you very much for your kind testimony this morning.

Mr. McGovern. Thank you, Senator.

Senator Denton. My next witness is Dr. Sicker, Dr. Martin Sicker of the Center for International Security here in Washington. His Ph.D. is from the new School for Social Research in New York.

Prior to his assuming the directorship of the Center for International Security, Dr. Sicker spent 25 years with the Federal Government in a variety of senior positions.

We are very appreciative of his willingness to testify today. Welcome, Dr. Sicker, if you have an opening statement, sir.

STATEMENT OF DR. MARTIN SICKER, DIRECTOR, CENTER FOR INTERNATIONAL SECURITY, WASHINGTON, DC

Dr. Sicker. Thank you very much, Mr. Chairman. I have a very brief opening statement. My name is Martin Sicker, and I am director of the Center for International Security. The center is a nonpartisan, nonprofit educational organization whose purpose is to inform the public on problems related to international security policies.

We have been giving attention for some time to the increasing use of state-sponsored terrorism as an instrument of policy by states promoting revolution, subversion, and insurrection.

Because of Libya's prominence as a practitioner of state terrorism, the center has been publishing a monthly called "Focus on Libya," which examines very closely Libya's proxy relationship with the Soviet Union and its role as a force for regional and international destabilization.

The bill, S. 2771, under consideration by the committee, which, in effect, proposes a revision to article 31 of the Vienna Convention of 1961 dealing with diplomatic privileges and immunities, is most timely and appropriate.

While the bill, if enacted into legislation, will not in itself affect the course of states bent on the practice of terrorism, it will direct the world's attention to the recognition that the United States, for one, is no longer willing to accept passively the subversion and distortion of the rules of comity that have governed international relations for centuries.

Indeed, if the current patterns of international behavior of countries like Libya, Cuba, Iran, Nicaragua, Bulgaria, and the Soviet Union are permitted to continue unopposed in twisting the accepted norms of state relations to meet their goals, the entire edifice of international law will be undermined.

A particular case in point is that of Libya whose egregious violation of diplomatic norms in London on April 17 of this year resulted in the killing of a London policewoman and the wounding of 11 Libyan exiles who were demonstrating peacefully outside the Libyan Embassy.

This incident along with others involving the use of Embassy personnel with diplomatic immunity to terrorize Libyans opposed to the regime of Colonel Qadhafi is but one aspect of a pattern of disregard for international law that makes a mockery of it as a basis for state relations.

In a speech broadcast over Libyan radio on March 28 of this year, Colonel Qadhafi announced to the world his unilateral delimitation of the applicability of international law.

He stated, and I quote, "We consider all the positive and negative interactions, be they military or peaceful, from the Atlantic Ocean to the Arab Gulf," that is what we normally know as the Persian Gulf, "internal, local, and civil interactions to which no condition of international law applies. If a war occurs between Libya and Egypt then international law on war does not apply," end quote.

Thus, as far as Libya is concerned, the entire vast region of North Africa and the Middle East constitutes but a single Arab Nation. Anything occurring in this region, whether in Morocco, Sudan, Israel, Lebanon, or Saudi Arabia falls outside the purview of the world community and is not subject to the rules of international law.

Although no other country of the region has agreed to such unification, as far as Qadhafi is concerned, it is of little matter. Libya arrogates the right to do what it wills in this region, presumably also to treat anyone opposed to Qadhafi the same way as his

Libyan opponents are treated, whether in Tripoli and Benghazi or in London.

The passage of S. 2771 would constitute a step, albeit a small one, in making it more difficult for the leaders of terrorist states such as Libya to achieve their barbaric purposes by abusing the conventions adopted by civilized nations.

Thank you.

Senator **Denton**. Thank you very much, Dr. Sicker. I must say my own persuasions are very much in line with yours at this point. Could you tell us what the requirements and qualifications are for one to be a Libyan representative in a "People's Bureau" as opposed to a Libyan Embassy?

Dr. **Sicker**. Since Libya was converted from the Libyan Arab Socialist Republic to the Libyan Arab Jamahiriyah, which is an original term conjured up by Qadhafi meaning the state of the masses, there are no Libyan Embassies any longer. And so what were previously Libyan Embassies are all now People's Bureaus.

The qualifications to be a Libyan diplomat or a member of the People's Bureau is increasingly becoming simply a devotion to the regime, a willingness to carry out Qadhafi's orders. This has helped account, in recent years, for the increasing defection of Libyan diplomats all over the world who have taken advantage of their position of being outside Libya to defect and join the opposition movements.

Senator **Denton**. So they have renamed them but they also assume unto themselves such abusive prerogatives as the ones you mentioned with respect to immunity from international law.

Dr. **Sicker**. Absolutely.

Senator **Denton**. A radio broadcast from Cairo last week reports Abd Al-Hamid Al-Bakkush, the Libyan Liberation Organization Secretary General and former Prime Minister, as saying that he has received information that Muammar Qadhafi's regime is planning a series of executions at home, assassinations abroad, and terrorist acts mainly against the Embassies and airline offices of Sudan and the United States.

Al-Bakkush said Libya is currently recalling all its students abroad and that the People's Bureaus in Europe and the United States are holding the passports of all students there and ordered these students to leave for Libya before Sunday, July 15. The students will get their passports only at the airport.

He added that the declared purpose of the students' return is attendance at student conferences to be held there, but it would appear the real aim is to trap and physically liquidate the elements opposed to the regime and those whose loyalty to the regime is suspect.

Plans are also being drawn up for the assassination of those who refuse to return. Do you place any credibility on Mr. Al-Bakkush's allegations?

Dr. **Sicker**. I would place a great deal of credibility on them. As is well known, Qadhafi has been persecuting students and Libyan exiles abroad for many years. But, since the assassination attempt of May 8 of this year, Qadhafi has reached a new stage of panic in terms of his personal security within Libya.

The situation basically is that Qadhafi is not concerned about an uprising in Libya in and of itself, because of the nature of the totalitarian control he has over the state. What he primarily is concerned about, and this was reflected in the event that took place on May 8, is a combination of outside Libyans being able to mobilize opposition forces within Libya and jointly attacking him.

This is where he considers his greatest vulnerability to lie, and so he pays great and very serious attention to the outside opposition. Until now it has just been a question of terrorizing them for the sake of establishing his preeminence in Libya.

Since the May 8 incident, he is seriously concerned about the organizational capability of the Libyan exiles to mount an overthrow of his regime. And so I would put a great deal of stock in Bakkush's statement, because it reflects the reality.

There are numerous Libyan leaders who are currently under death sentence in absentia who would be very happy to see and participate in Qadhafi's being overthrown. The threat thus becomes very real for him.

Senator **Specter**. Mr. Chairman, let me ask one question of Dr. Sicker. What is your view of the risk of retaliation? Do you think that that should deter us from taking an appropriately tough stand by way of imposing obligations on murdering terrorists, not to let them out of the country like the United States or Great Britain?

Dr. **Sicker**. Senator, are you speaking specifically in terms of Libya, for example?

Senator **Specter**. Well, you heard the testimony of the State Department.

Dr. **Sicker**. Yes.

Senator **Specter**. Do you think that the objectives that could be obtained by stopping murderers like Libyans in Great Britain would outweigh the potential disadvantage to our own diplomats abroad?

Dr. **Sicker**. I do not agree with the State Department's expressed views at all. I think that the prospect for retaliation would depend entirely upon a whole range of other factors.

If we take Libya as a specific example, let us say that the incident in London occurred here and the bill was enacted and we prosecuted one of the Libyan diplomats. Before Qadhafi would attempt to conjure up a similar type of case to frame one of the American diplomats, he would have to take into consideration what further retaliatory actions might be taken by the United States, actions which could be considerable.

In fact, the only country in a position to retaliate in kind might possibly be the Soviet Union, and I think, as Senator Denton pointed out, they would have much more to lose by that than anyone else.

I do not believe that any of the smaller countries can simply treat this as an independent act because there are other things that the United States could do. In other words, it could start a cycle of retaliation at which even Qadhafi would balk.

Qadhafi, for example, is extremely solicitous of American corporations working in Libya because his economy is dependent upon them. If he were to believe that some sort of outrageous act in Libya against American diplomats might lead to the U.S. Government or the Congress insisting that some of the oil companies or construction companies that are upholding the Libyan economy actually cease operations, that would be a far greater punishment than the mere sacrifice of one of his devotees.

And I am convinced he would sacrifice his Embassy people very readily without going to that kind of extreme.

Senator **Specter**. Thank you very much, Dr. Sicker.

Mr. Chairman, that is the only question I have. It seems to me that is the central point that the State Department has brought up today. They do not disagree with the approach of S. 2771 as a matter of principle. They are just concerned, really, about retaliation, and I wanted to get that view from Dr. Sicker in his capacity as director of the Center for International Security, and in view of the lateness of the hour, that is the only question I have.

I thank you, Dr. Sicker.

Senator **Denton**. I want to establish my own agreement with the two of you on that question of whether or not at the present time I believe that the loss would outweigh the gain were we to proceed as we proposed. I agree with the two of you on that. I think that there would be more gain than loss although it is a far-ranging question.

I am still open to thought about it. One thing that was present in my mind during the course of this hearing this morning, it may be that it would be desirable to deal with this vis-a-vis Libya alone rather than some approach such as we are taking, but I cannot think of a way that would be as symbolically indicative of the U.S. righteous indignation and determination to protect itself from such other abuses.

We have other nations who might become like Libya. The rule of the jungle is already too applicable out there again. So I am still persuaded that the way we are proceeding is correct.

I want to thank you for your patience, Dr. Sicker, in waiting. We will be looking forward to and hoping you acquiesce in our request that you serve us in a consultative capacity——

Dr. **Sicker**. I will be very pleased to do so.

Senator **Denton**. For the remainder of the time we pursue this matter.

I want to thank you, Senator Specter, again. I used to be on your subcommittee, and I believe I still am. With our respective duties it is difficult even to go to another fellow's subcommittee meeting, and you see how many are here besides yourself this morning.

This is very unfortunate because the Senate body needs to know what goes on at this subcommittee's hearings, not because I am in charge of it, because the subject is so tremendously important.

Senator **Specter**. Senator Denton, I wanted to stay throughout the entire hearing and indicate my respect and admiration for the work that you are doing, because we do all have so many responsibilities.

I join you in thanking Dr. Sicker. It is like the story of the political speaker who was called upon very, very late in the evening and at the time he was called upon there was only one person left in the audience. He said, "I want to thank you very much for remaining to hear my speech." The audience member stood up and said, "Do not thank me. I am the next speaker." [Laughter.]

Senator DENTON. Well, your position will be different next time. We will bring you on early. Thank you very much. Thanks for the interest of the people that appeared this morning.

This hearing stands adjourned.

[Whereupon, at 11:52 a.m., the subcommittee adjourned at the call of the Chair.]

FIREARM FELONIES BY FOREIGN DIPLOMATS

FRIDAY, SEPTEMBER 21, 1984

U.S. Senate,
Subcommittee on Security and Terrorism,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:12 a.m., in room SD-226, Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Also present: Senator Specter.

Staff present: Joel A. Lisker, chief counsel and staff director; Gerald Everett, congressional fellow; and Fran Wermuth, chief clerk.

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator Denton. Good morning. This hearing will come to order.

Justice Goldberg just announced or remarked, as he gave me the privilege of meeting him, this hearing occurs in the contemporary context of the bombing yesterday of the U.S. Embassy annex in Beirut. There is a lot going on in the terrorist field which we have not caught up with in terms of legislation, in terms of awareness, in this country. Until we do, we are going to be subjected to the intimidation, to the losses in interest, be they strategic, economic, or psychological, which have been visited upon us so far. That is going to increase.

I do not like the tendency the day after for newspapers such as the Washington Post to say immediately the Embassy was insecurely guarded, we have got to pull out our Ambassador, and so on. I think that is just the kind of head in the sand, not to mix a metaphor, but "chicken" reaction that terrorists want. They are just encouraged to increase their activities because their type of psychological slant, brutalities, brutal warfare, is working.

The carnage has to stop and the best way to make it stop is for the United States to send clear and convincing messages to terrorists around the world that their actions will no longer be tolerated. That message perhaps can best be conveyed by Congress if it passes the administration's antiterrorism bills that are currently before it.

The Senate has almost completed its work on two of the bills implementing legislation for the Montreal Convention on Air Piracy and the rewards bill for information about terrorism. They have been unanimously approved by the Judiciary Committee. The third bill, implementing legislation for the National Convention on the

Taking of Hostages, was unanimously reported out of the Security and Terrorism Subcommittee yesterday.

In the Senate a sense of bipartisan cooperation has prevailed in approaching the issue of terrorism. The same cooperative, bipartisan spirit has prevailed over on the House Foreign Affairs Committee where Chairman Dante Fascell, a Democrat, and Congressman Bill Broomfield, the ranking Republican, have worked hand in hand to move the legislation along.

In general, I am determined as a Senator, and one of my reasons for trying to become one was the goal of reachieving bipartisanship in matters in which we cannot afford partisanship. We have enough issues on which we can choose up sides and split across lines of Democrat-Republican, conservative-liberal, but some of the ones we are splitting across now should not be partisan issues. This is one.

So what is holding the legislation up which is needed for partial remedy to this problem? Who is holding the legislation up? Who is responsible for bottling up the antiterrorism legislation that this country so vitally needs? My information indicates, without a doubt, this person is Congressman William Hughes, at the moment the chairman of the House Judiciary Subcommittee on Crime. He has the bills bottled up in his subcommittee and he will not move them out. His committee is the committee to which Tip O'Neill refers things that he wants indefinitely removed from action and this particular subcommittee is serving that purpose at the moment regarding these bills.

And I exhort concerned Americans who do not wish to see such partisanship, such derailing of the process of legislative progress, I exhort them to call Congressman Hughes, write him, send him a wire. His name is William Hughes, 341 Cannon House Office Building, Washington, DC ZIP 20515. That is William Hughes, 341 Cannon House Office Building, Washington, DC 20515. His telephone number is (202) 225-6572. I do not have time to lobby as many people on as many issues as I must, and if I did, I do not think it would have a particular effect on this gentleman. But maybe hearing from some Americans, perhaps not always with me in my political philosophy, would impress him.

This morning's hearing is the second in a series of hearings that is being held to consider S. 2771. Senator Specter, who is here this morning as a witness, and I introduced this bill in an effort to focus attention and consideration on the growing problem of the use of terrorist tactics by so-called diplomats who are under the protection of the Vienna Convention on diplomatic immunity.

The double germaneness of our topic this morning derives from a press account in this morning's papers indicating that diplomatic license plates were on the terrorist van that was used in the bombing of our Embassy annex in Beirut yesterday. And the van was waved on into the Embassy compound because of those diplomatic plates.

I want to welcome my distinguished colleague from the Keystone State who, although he is not a member of this subcommittee, has seen fit to join with it and with me on addressing this very important issue. He has a record of being a tough, aware prosecutor. He has certainly become a friend and allied mind and he will be our first witness. I have attended many of his hearings and find him an excellent Senator and have enjoyed working with him in his study of juvenile crime and the causes thereof and how to remove them.

We have a particularly distinguished panel this morning led by a man who is internationally renowned, the Honorable Arthur J. Goldberg. And he will be followed by Prof. John Murphy.

Justice Goldberg has served this Nation notably in a number of distinguished roles, including Secretary of Labor, Supreme Court Justice, and Ambassador to the United Nations. He was awarded the Presidential Medal of Freedom in 1978. He asked this morning if he could digress perhaps just a little on something he wants to expound on, and I certainly solicit that, Justice Goldberg. Whatever you care to observe here in this chamber you will be gracing us with.

Professor Murphy of the Villanova University School of Law is a recognized specialist in international legal affairs, having served in the State Department's legal adviser's office and having lectured on the subject not only at Villanova, but also at Kansas University, Georgetown, Cornell, and the Naval War College. He is the coeditor of "Studying Legal Aspects of International Terrorism," a study conducted by the American Society of International Law under the auspices of the State Department. And he is the author of a book entitled "The United Nations and the Control of International Violence," recently published in 1982. Professor Murphy currently serves as a consultant to the American Bar Association's Standing Committee on Law and National Security and is a consultant on international terrorism for the Department of State.

Senator Specter, if you will permit me, before proceeding as a witness, I would like to enter into the hearing record a statement, in support of S. 2771, by the Honorable William Broomfield, the distinguished Representative from the 18th District of Michigan. As mentioned, Congressman Broomfield serves ably in the House of Representatives as the ranking minority member of the House Foreign Affairs Committee and of its Subcommittee on International Security and Scientific Affairs.

Congressman Broomfield has introduced in the House a companion measure to S. 2771, H.R. 5928. He, unfortunately, is unable to join us today to present his testimony firsthand, but I commend him for the leadership he has shown on this issue. His leadership is particularly meaningful in view of his long and distinguished service of nearly a quarter of a century on the Foreign Affairs Committee.

So, without objection, I will enter that into the record.

[The prepared statement of Congressman Broomfield follows:]

PREPARED STATEMENT OF HON. WILLIAM S. BROOMFIELD

Thank you, Senator Denton, for the opportunity to enter for the record testimony regarding this critical problem, the use of firearms by foreign diplomats to commit a felony. As you know, I recently introduced a companion resolution in the House, H.R. 5928. I share your deep concern about this timely issue. This is one of the many manifestations of the ugly phenomenon of terrorism. Now is the time to punish diplomats who use firearms. They should not be allowed to get away with cold-blooded murder anywhere in the world.

Although I regret the fact that this legislation is even necessary, I have been deeply concerned in recent years about the routine abuse of diplomatic privileges by some foreign countries.

The legislation which Senators Denton and Specter introduced in the Senate and I introduced in the House (H.R. 5928) is designed to protect Americans against violent acts committed by so-called diplomats. In particular, the bill would change title 18, United States Code, and make it unlawful for a member of a foreign diplomatic mission or consular post in the United States entitled to immunity from criminal jurisdiction in the United States to use a firearm to commit any felony. The violator of this proposed new law would be punishable by a fine or imprisonment.

While our Department of State sends Americans of integrity overseas to represent our great nation, many of the foreign diplomats of certain nations are all to often involved in illegal and embarrassing activities around the world. Evidence abounds that some foreign governments no longer want their diplomats to conduct themselves in accordance with the traditional responsibilities, privileges and immunities provided by the Vienna Convention. While our government scrupulously conforms to the letter and the spirit of the convention, some nations make a mockery of that accord. They turn their embassies into armed camps. They use their so-called diplomats as hired assassins.

The facts speak for themselves. While a foreign embassy has never been attacked and violated here in America, the Iranians sacked our embassy in Tehran and held our diplomats captive for 444 days. In 1979, the Libyans penetrated and burned our facility in Tripoli. Fortunately, the American staff escaped unharmed. Many of our embassies and personnel abroad have become the target of state-sponsored terrorist attacks.

The Libyan Government is also active in pursuing its opponents all over Europe. In recent years, the Libyan Government has used its "diplomats" to hunt down and murder many young Libyans in Europe who spoke out against the atrocities of the Qaddafi regime. The tragic murder of a British policewoman in London a few months ago called the world's attention to the fact that some nations' embassies function as terrorist support facilities. That innocent public servant was shot by a Libyan hit man posing as a diplomat. He was protected by diplomatic immunity, and left the country with the blood of the innocent on his hands.

Diplomatic immunity cannot be a passport to wholesale murder and the violation of a country's laws. Now is the time to protect our own people from terrorists who wear striped pants. After our legislation becomes the law of the country, so-called diplomats who use a firearm to commit a felony will be rightly punished. Our effort is a small but important step along the long road stopping terrorism. It merits your support.

Thank you.

Senator DENTON. Senator Specter, will you proceed at your convenience.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman. At the outset, I commend you, Senator Denton, for your leadership on this very important subject. The problem is that there is not a sufficient followership to back what you have been trying to do in the almost 4 years which you have been in the Senate.

As you have earlier noted, I join with you in the introduction of Senate bill S. 2771, following the brutal murder of the British policewoman by the Libyans, in conjunction with a resolution to change the Vienna Conventions to restrict diplomatic immunity. I testified at the earlier hearing, but in the intervening period of time I have had an opportunity to visit the Middle East, to have some new observations on the problems of terrorism, and to have done some additional research on this subject which I would like to testify about. I shall do so as briefly as I can, because we have a very distinguished panel led by former Supreme Court Justice Goldberg.

For many years, about a quarter of a century, I have been concerned with fighting criminals and terrorists who are international criminals. They must be dealt with as criminals, and I think they can be dealt with effectively as criminals to deal with those who are perpetrators and to catch them, to incarcerate them, to punish them, and to deter other criminals, because that's the way our system works, and it can work in the international field as well, although there are some unique problems because of fanaticism which grips some of the international criminals known as terrorists.

We have been on notice about the problems which blew up in our face yesterday. We had notice in early 1983 when our Embassy in Beirut was attacked and this was a subject of a hearing by the Appropriations Subcommittee dealing with the State Department, which occurred in April 1983. At that time the subcommittee, chaired by Senator Laxalt with Secretary of State Shultz present, volunteered to the Secretary of State that they would back additional funding to whatever extent it was necessary; that we believed that our Embassies were an extension of U.S. territory and that they ought to be protected by the United States. I made that volunteer statement backed by Senator Rundman and others on that subcommittee. It is a matter of utmost urgency that followup action be taken on it.

It is not necessary to chronolog what has occurred from the attack on the Embassy in early 1983 and the October 23d attack on the Marine barracks and the events of yesterday, but I have observed, in a trip in August to the Mideast, the horrible impact of terrorism as it afflicts that arena of the world more acutely than any other.

It is my concern that terrorism will proliferate beyond the Mideast to the worldwide picture and that an enormous concern is to have nuclear power, bombs in the hands of the terrorists, more so perhaps than the problems concerning the potential confrontation between the Soviet Union and the United States.

I was in Cairo on the day that President Mubarek made his statments about the terrorism on the mining of the Red Sea and met with the President on that subject as part of the discussion of the problems of the Mideast. Terrorism is the No. 1 problem of the Mideast which is stopping negotiations and a resolution of the problems which exist between Israel and the Arab Nations.

I observed it in my discussions with King Hussein, who is unwilling to take the lead at the present time without authorization or consultation from the PLO, who really should not be a part of negotiations, because they are avowed, announced terrorists, but King Hussein has to recollect the assassination of his own grandfather when he was a teenager and at present is reluctant to take the lead lest he fall victim to assassination as Anwar Sadat did and Beshir Gemayel did.

In talking to the Saudi leadership, there is an overcloud of concern there about terrorism. They pay off, plain blackmail, the PLO and the Syrians to avoid the problems of terrorism. They are unwilling to move forward, as they should, in a leadership role. So terrorism is really preventing negotiations in the Mideast today.

When I had the opportunity to meet with the Syrian Foreign Minister, we discussed the issue of the Lebanese-Israeli border, which again is an issue of terrorism. The Israelis have announced a change of position. They are prepared to withdraw from Syria unilaterally even if Syria does not withdraw from Lebanon, but they are not prepared to do so if the border is insecure.

There is precedent on the Syrian-Israeli border for a demilitarized zone, a zone free of terrorism. It has worked since 1973. And I asked the Syrian foreign minister the fundamental question, why not put into effect what has been on the Syrian-Israel border on the Lebanese-Israel border. He said it is different.

After about 20 minutes of discussion the difference was that the Syrians are not interested in solving that problem. But it is a problem of terrorism. That is the way of life in the Mideast, and we saw it again yesterday.

I believe, Mr. Chairman, that we can take some specific steps against terrorism in a concrete way to deal with the problem. Two of the matters are on the agenda here, S. 2771 and the change in the Vienna Conventions, so that we can prosecute people like the Libyans who murdered the British policewoman. And we can go beyond that and prosecute others who may be involved.

If the chief of state of Libya is involved—and I am not saying he is, but it is a matter to be investigated—he, Qadhafi, can be responsible for the activities of the Libyans he knows participate, acquiesces on a regular standard of criminal responsibility, because others than the man who pulled the trigger may be responsible; coconspirators or directors may be responsible as well as the person who pulls the trigger.

Since our first hearing, Mr. Chairman, I have been researching the subject, my staff and I, working with your staff, and believe that there is good precedent for a definition of an international crime of terrorism by analogy to the crime of piracy.

Piracy was defined as an international crime years ago in response to a terrible international problem, not a problem as bad as terrorism, however. And the law evolved on piracy so that a pirate could be prosecuted wherever he was found. Now, that is a fundamental deviation from the general criminal law which permits a prosecution only in the jurisdiction of the offense. But piracy was so serious a pirate could be prosecuted wherever he was found.

If a pirate can be prosecuted wherever he is found, so should a terrorist be prosecutable wherever the terrorist is found. And if a pirate or a terrorist may be prosecuted where found, it is my suggestion, Mr. Chairman, that a pirate or a terrorist should be arrestable wherever they are found.

There is solid precedent, precedent which may surprise some; it frankly surprised me when I started to research this field and found that going back as far as 1886, the Supreme Court of the United States, in a case called *Kerr* v. *Illinois,* approved tactics where the State of Illinois kidnaped a man in Peru, charged in an Illinois criminal court, and brought him back to Illinois and prosecuted him. That satisfied the requirements of due process of law. And no country in the world has more rigorous concepts of due process of law than the United States of America and the U.S. Supreme Court.

That doctrine was upheld in an opinion written by Justice Black, well known for his concern about defendants' rights. It stated in a nutshell and worth reading, although I would try not to burden this record with court opinions, in the case of *Frisbee* v. *Warden,* at page 522, 342 United States Reports:

> This court has never departed from the rule announced in *Kerr* v. *Illinois,* that the powers of a court to try a person for a crime is not impaired by the fact that he had been brought in the court's jurisdiction by reason of a forceable abduction.

So that there are ways to deal legally with pirates and with terrorists. And I would suggest to you in a very brief statement this morning, Mr. Chairman, that there are three approaches to this issue. One would be that the jurisdiction where the offense was committed, like the British criminal courts would have jurisdiction to try the Libyans and they should have tried them for murder and anybody else, even outside of Libya, who may have been responsible, any Libyan officials.

Second, we may institute an international tribunal, like the one at Nuremburg, to try international crimes. And, third—and I am going to be introducing legislation on Monday on this subject—to make it a crime against the laws of the United States for a terrorist to assault a U.S. citizen, like a U.S. Ambassador, such as the assaults which were carried on in Beirut yesterday.

There is ample precedent for a definition of a crime against the United States of America, notwithstanding the fact the crime occurs outside of the territorial jurisdiction of the United States. There are precedents in the law of perjury where it is a violation of U.S. law even if the perjury occurs outside of the United States. There is an adequate nexus and an adequate interest to be protected for the United States of America to define a crime such as that which occurred yesterday in Beirut. Certainly, there are enormous questions about whether any government exists in Lebanon to prosecute a crime or to provide for safety and security, and that is a responsibility that we have to undertake ourselves and do a better job on. Certainly, that Embassy compound for many purposes is U.S. property and where U.S. citizens of ambassadorial rank or any U.S. citizens are victims of murder or assault with intent to kill or terrorist activities, that should be defined as a crime against the laws of the United States.

Once we have identified the terrorists, the perpetrators, and Secretary of State Shultz had made the announcement after the bombing of the Marine compound to the effect that we knew who they were and that action should be taken, then we ought to find those individuals and we ought to arrest them wherever they are and by whatever means is necessary. And it is not just the precedent of the Eichmann abduction upheld by the Supreme Court of Israel, but forceable abduction, as Justice Black labels it, upheld by the Supreme Court of the United States.

We should identify, then we ought to take these persons into custody if it involves abduction and bring them to the U.S. courts, to try, convict, and punish them. I think the United States has to function in a somewhat different role. When I was in Israel, the day before there had been a bomb located on a bus, and the next day the Israelis struck at a PLO training camp by way of retaliation.

And I do not disagree with what tactics Israel may choose, because they are in a situation where their survival is at stake and they respond as they conclude they must. From a distance I would not presume to give them advice as to how to respond for their own self-defense and their own national survival.

But I do not think the United States of America can make a determination within our own ranks as to who is responsible and retaliate in that way. We are too powerful. There are too many forces at work that might incite a world conflict if we responded in that way.

But if we do identify the perpetrators and we do acquire custody in whatever means is necessary, including forceable abduction, then they ought to be brought to the U.S. courts and they ought to be tried. And I think this is an effective way, at least a first step, in dealing with the problem of terrorism.

Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator Specter. Of course, we will have no questions for you, but in view of the unknown but real shortage of time that we as Senators have to discourse on subjects even as important as this, I would like to respond a little to you because we just do not have that much time together.

First, I want to acknowledge to you how important to our purposes we regard your particular background and slant on this subject as well as the concrete work you have done on it, and I look forward to increasing our synergism on this subject.

You were kind enough to note that a lot of the work we have done on this subcommittee was first drowned in a predisposition derived from I do not know where, that I was up here to advocate a man on a white horse killing anyone who did not constantly recite the pledge of allegiance, have some sort of litmus test for loyalty, and all that sort of thing. I do not know what I did to deserve that. I never had that reputation in the Navy or in schools or anywhere else. But that led to a bias in the reporting, that predisposition, of what we found in such hearings as the one looking at the terror network around the world, based on testimony from Claire Sterling who wrote the book "The Terror Network," who was a Communist in college, considers herself a leftwinger now, is a student of that subject. We had William Colby, a former CIA director. We had Arnaud De Borchgrave. We had Michael Le Deem. We looked into the terror network as it exists around the world.

You were referring to the Mideast and you are talking in terms of retaliation. The word might be better described in the case you cited as reprisal. But there is the law which permits that sort of thing. It is a very deep subject. It is one which you are versed in in one sense and I in another. And I hope we can put that together.

I am reminded since you brought up the term piracy of the Marine Hymn and the reference to the shores of Tripoli and the day in which terroristic pirates from Tripoli were rampaging the seas and intimidating major powers, the United States being a minor power.

In those days we faced the crocodiles a bit more realistically. We had been a nation born in a survivalistic environment, and we recognized in order to survive you have to tackle the bully sometime; you have to stand up to him, and if you do, bullies being cowards will not attack you again. So the Marines went in and took on that little stronghold of piracy and knocked it out. And the world owes us a debt for that.

I do not want to be swinging a big stick all the time and I do not think the whole burden of stopping communism or terrorism should rest on us, but I do not think we are doing our homework. I believe we have gotten into a dreamy, unrealistic mood from which I hope we emerge in a bipartisan way, and I hope the media and the establishment find it in our mutual interest to preserve this wonderful free country by looking into it objectively and let us not dismiss one another out of hand and finally as some kind of nuts.

I think that the bipartisanship has to go beyond the parties and to the media, that is, the networks, in particular the rest of the media, the print media, the big newspapers. And let us see if we cannot stop politicizing or caricaturing on the subject and see if there is something that we can learn from both sides and solve it.

Would you like to come up here, Senator Specter, as we conduct the rest of this hearing?

Senator SPECTER. I accept your invitation.

Senator DENTON. Thank you and thank you very much for your most valuable statement.

We have already introduced our next extremely distinguished witness, and I will ask Justice Goldberg now if he cares to deliver his statement.

STATEMENT OF HON. ARTHUR J. GOLDBERG, FORMER SUPREME COURT JUSTICE AND FORMER U.S. AMBASSADOR TO THE UNITED NATIONS

Justice GOLDBERG. Mr. Chairman, I join Senator Specter and you in your statement that terrorism is one of the most dangerous aspects of our present society. It is particularly dangerous to a democratic country because, acts of terrorism are increasingly state supported. In many instances, they have been committed against Western democracy, and that itself is a cause of concern in foreign policy terms.

To put it very simply, why is it that the Eastern embassies, the Eastern bloc, the Warsaw bloc seem to be safe? Why is it that the Western democracies do not appear to be safe? That is a subject that requires, I think, some scrutiny in reference to the sources.

Senator DENTON. I would be the last to interrupt such a learned scholar and Justice, but we spent perhaps 16 hours of hearing time establishing just what you are saying, and it did not get in the papers. And that is what I was talking about. We did it in a very scholarly, objective way. There was no baloney and no slant to it. It was bipartisan and yet for some reason, you know, it just did not get there.

Justice GOLDBERG. Mr. Chairman, I told you informally after I prepared my testimony the incident yesterday occurred, the bombing of our Embassy in Beirut, and that I am of the opinion it is relevant to your inquiry. It was a terrorist incident. There is no doubt about that. And as a former ambassador to the United

States—put aside as a Justice of the Supreme Court—in two capacities, you mentioned one at the United Nations, I also was Ambassador at Large, chairman of our delegation at Belgrade, and I have had some experience with this problem.

I share this committee's concern that our embassies abroad are not sufficiently protected. I know that the appropriations committee, as Senator Specter has announced, has looked into this question. But, with due respect to Congress and the State Department, I do not feel that our embassies throughout the world are sufficiently protected, particularly in countries which, like Lebanon, where there is actually no functioning government. We are hopeful that there will be one.

It is essential that we do everything within our power to protect diplomatic and military personnel who loyally serve us abroad. We have had one of our ambassadors killed in Lebanon. And now we have an ambassador wounded, two Americans killed, and a number of Lebanese employees of our embassy killed and wounded. When we employ locals we assume the responsibility for their safety in our Embassy.

Now, I am out of politics, Mr. Chairman. At my ripe age I commiserate with those of you who are in. You have to raise money to run for office. I tried it once. It was a trying experience. You could never seduce me into running for office again. I think you are all heroes for standing for office in the United States at the present time.

So my remarks are directed both at Democrats and Republicans. When I was in Belgrade representing our country as an ambassador, the State Department assigned marines to provide security because my name was in Sirhan's diary as a person along with Bobby Kennedy to be killed; it was only an accident that I was not the first victim because I was supposed to make a speech at Los Angeles the same day. Something arose at the United Nations at the Security Council, and I had to cancel my Los Angeles appearance. When Senator Kennedy was killed, the FBI in the early hours of the same morning brought me a copy of Sirhan's diary. Because of that the Department of State said that they would feel impelled to furnish me with nine marine guards.

Now, this relates to what happened yesterday at Beirut and relates to the tragedy of Iran. The Department, as I have said, to provide security, sent nine marines, very nice young men. Then I received a telegram from the Department saying you understand, of course, we have to rely upon the host country to provide security.

And, therefore, the telegram further stated, we want your marines to be in civilian clothes and unarmed. I thereupon replied by cable to the Department, that if that is your decision, take the marines back, saying, what do I need them for? At which point I heard nothing, as often happens in government.

Whereupon, I armed the marines with side arms and instructed them to wear their uniforms. I also instructed them to store, in the lower section of the house I occupied in the Embassy compound, antiriot equipment, not killing equipment, tear gas and other equipment that have been found to be useful in combatting mobs. Also, I stationed the marines, in a three-man rotation, at the gate, and I said, nobody enters beyond the gate unless—there was a buzzer system—I or my wife say he is a visitor that we accept. And that included high-ranking officials close to Marshal Tito who called on me.

There was no objection from the Yugoslavs. They have a PLO office as observers. Sirhan may or may not have contact with them. The Yugoslav Government was sensitive to the security problem. And they never objected.

It may interest you to know that my host country protection, as I told the Yugoslav foreign office, was a very nice Yugoslav policeman, Misha. But Misha had other duties and, therefore, appeared at my residence, sporadically. This may be because of my marine guard.

My marines, to safeguard against terrorism, were armed; they manned the gate and installed a buzzer system. Regardless of whether a van showed up with diplomatic license plates or even the chief of state, Marshal Tito, they were instructed to buzz me for clearance.

Now I want to talk about yesterday. I wrote an article some time ago about Embassy security for the Christian Science Monitor. I thought I had it with me, but with your permission I will supply it and make it part of the record.

Senator DENTON. Without objection, we shall include the article by Mr. Goldberg from the Christian Science Monitor.

[The following article was subsequently received for the record:]

[From the Christian Science Monitor, Jan. 23, 1984]

SECURITY OF AMERICAN EMBASSIES

(By Arthur J. Goldberg)

The House Armed Services Investigations Subcommittee issued an extraordinary report Dec. 19 sharply criticizing the military chain of command for lax security in the Oct. 23 truck-bombing that killed 241 United States Marines in Beirut.

The report comments about the prior bombing of our embassy in Beirut that resulted in more than 60 deaths.

In this unruly world, where terrorism is all too prevalent, the security of our embassy personnel throughout the world warrants more attention than it has received.

A number of our embassies, including most recently those in Lebanon, Kuwait, and Tehran, have been the subject of terrorist bombings or takeovers.

Perhaps the most politically notorious of these attacks was the storming of our embassy in Tehran and the capture and confinement of more than 50 embassy personnel by Iranian so-called revolutionary guards.

In my own diplomatic experience, both at the United Nations and as ambassador-at-large in Belgrade, I found that security measures for our embassies and residencies of our ambassadors are woefully inadequate.

Because of my concern, shared by many Foreign Service officers, that our foreign personnel abroad are not being adequately protected, on May 5, 1982, I addressed a communication to General Haig, then secretary of state, relating to this subject.

In my letter I pointed out that, according to reliable press accounts, our embassy in Tehran was most inadequately secured. The press reports stated that our embassy had a complement of 18 marines. Further, the arms and antiriot equipment available to the marines were apparently kept under lock at the time the embassy was seized. It also appeared that the marines were under orders, from our ambassador or his deputy, to wear civilian clothes and be "unobtrusive." Most of them were on temporary leave and not at the embassy when it was invaded. The marine detachment was not at fault. It was following orders of the Office of Security of the State Department to the ambassador or, in his absence, to the deputy chief of mission.

As an officer in the American Army in World War II, with some experience in this area, I feel that, were the 18 marines in Tehran armed with antiriot and other armaments and manning the gates, they could have prevented the Iranian mob, then largely unarmed, from entering our compound and seizing our people as hostages. Our country would have been spared a terrible trauma.

In answer to my letter, General Haig responded on June 1, 1982. His response was obviously prepared by State Department officials in charge of security. In essence, General Haig stated that, under the Vienna Convention on the Conduct of Diplomatic Relations, the host government is charged with the responsibility for the protection of accredited diplomats and diplomatic property. How this convention would protect our embassies and our Foreign Service officers in revolutionary situations, such as in Iran or, in chaotic ones as in Lebanon, against terrorist attacks, is not addressed.

General Haig added that, notwithstanding the convention and its requirement that host countries must secure foreign embassies, chiefs of mission now have authority to utilize marines as a *small* deterrent force to repel any assault upon embassy property and personnel.

These security provisions are grossly inadequate. A *small* force is simply not enough when matters threaten to get out of hand and host-country protection is often unreliable. Ambassadors, either acting on their own or under instructions, seem reluctant to exercise this authority, presumably because they are given to understand that additional security measures are costly.

Whatever security is provided is for the embassy proper, not for the ambassador's residence. The French are more realistic. When a mob of Syrian-inspired Lebanese recently attempted to storm the French Embassy in Beirut, they were repelled by armed French paratroopers who had been brought in specifically to ensure the security of the French Embassy and residence.

I found General Haig's response to my letter to be inadequate. But I fear that what he said is still in our policy, except in extraordinary situations, such as Beirut. Upon inquiry, I have learned that embassy security has been improved in Beirut. The situation elsewhere remains unsatisfactory. Our foreign personnel, under the given circumstances, are very much at risk.

In light of the chaotic situation in various parts of the world and the prevalence of terrorism, it is foolhardy, as experience demonstrates, except in Western democracies and some Eastern countries to rely upon the host country to protect embassies and personnel. There is nothing in the Vienna Convention which precludes self-defense of our diplomatic properties and officers where the host country is unable or unwilling to provide adequate security. Just as our marines apparently were not adequately secured in Beirut, with the consequent terrible loss of lives, so, in my opinion, are our embassies and residencies in many parts of the world. And the financial cost of adequate security is infinitesimal.

The time is overdue for a complete and impartial investigation of the security of our diplomatic personnel.

I cannot prejudge the results of the investigation, which I recommend. It should, however, not be in-house but conducted by distinguished Americans. An investigation of this character is imperative and long overdue.

Justice **GOLDBERG**. Now, I also wrote to both Democratic and Republican Secretaries of State about the lack of adequate security for our embassies. I recall a letter I received from General Haig, Secretary of State. The letter, relating to Iran, said you are aware, of course, that under the Vienna Convention's established rules we have to rely upon the host country.

I wrote him back and I asked: Was there a responsible government in Iran during the revolution? How could our Government rely upon the Government of Iran to protect our Embassy when, in fact, there was no government but a revolutionary situation. This prompted me to make a study of what happened in Iran. I never have understood why there has never been a full investigation of what occurred in Iran to the great detriment of our country which I love and revere.

My investigation disclosed that despite the fact that the streets were teeming with revolutionaries, the gate at our Embassy was manned by two Iranian policemen. The 18 marine guards, pursuant to a directive of the State Department, ordered not to wear their uniforms. Their arms were locked up, so even if they were on duty—and by the way, most of them were not, it appears that our Embassy was unprotected.

It is my profound belief that had we had an adequate Marine or Army force—the marines do not have a monopoly on protecting the country, the Embassy could have been protected and hostages not taken.

What happened? At the initial stages, they were really revolutionary students, about 400 or 500 of them demonstrating before our Embassy. I doubt that they ever contemplated storming our Embassy. But the gate of our Embassy was guarded only by two Iranian policemen, who apparently decided to throw their lot in with the mob. I was an officer in World War II. A well armed and numerically small number of Marines, Army, or Navy, properly trained and armed with proper equipment, could have stood them off.

I wrote my article for the Christian Science Monitor. I received a letter from Bruce Laingen, who was the charge in Tehran. He was fortunate enough to be in the Iranian foreign office, so he was not at the Embassy and therefore not taken as a hostage.

Mr. Laingen took some exception to my article, but not on the facts. He reiterated the traditional State Department position that it was the obligation of the host country to protect the Embassy.

With your permission, since what occurred yesterday, I would like to offer for the record his letter to me.

Senator DENTON. Without objection, it will be included in the record.

[The letter referred to above follows:]

DEPARTMENT OF DEFENSE,
NATIONAL DEFENSE UNIVERSITY,
Washington, DC, January 30, 1984.

Reply to attention of: Office of the Vice President.

Hon. ARTHUR J. GOLDBERG,
1140 Connecticut Avenue, NW.,
Washington, DC.

DEAR MR. JUSTICE: I have read your article in the *Christian Science Monitor* of 23 January, and would like to comment on it since it seems to me that it is inaccurate regarding some particulars in our experience in Tehran.

Let me simply itemize my observations:

Arms and antiriot equipment available to our Marines were certainly kept in a secure area within the Chancery; however, they were not under lock and key at the time the Embassy was seized. On the contrary, the marines were operating on a special alert basis because of our concern for demonstrations at that time, and this alert arrangement included ready access to equipment.

The marines did indeed wear civilian clothes while off duty and were expected to be "unobtrusive" while moving about the city of Tehran and in their quarters just behind the Embassy back wall. (One of the *real* problems in our security arrangements was that the marines' quarters were not located on the compound; that fact did not preclude most of them from reaching the Chancery in this case but was always a concern to us. The Embassy had pressed the Department actively to correct this situation).

Most of the marines were *not* on temporary leave; only two were out of the country on leave at that time.

The marines were not "manning the gates" as a result of a conscious decision made following the February 1979 assault on the Embassy, when several marines at such duty stations found themselves at serious risk of loss of life and indeed one was taken captive by terrorists. The compound in Tehran is large, 27 acres, and it had been decided after the February assault that the Chancery could best be protected by duty stations within a fortified Chancery and a separate, hardened consular facility. A great deal of progress had been made to strengthen those defenses (to the point where we often termed the Chancery "Fort Apache").

I make these observations not in any self-serving sense but simply to insure that the record is clear. As you know, two of my colleagues and I were in the Foreign Ministry that morning and, thus, not physically on the scene in the Chancery during the assault. However we were in constant contact by telephone and radio, and I believe I have an accurate impression of the scene on the ground.

That included an awareness that those guarding the Embassy that morning faced not a few Iranians but a very large number. I remain convinced myself, as I believe do most of my colleagues, that to have begun firing would have been disastrous in terms of loss of life for all concerned.

Central to all of this, of course, is the fact that no matter what degree of resistance we had sustained in Tehran, the outcome was regrettably foreordained. That is because events quickly proved that the provisional government then in power was powerless to implement their prior assurances of security protection, and the elements in the Revolutionary Council who *could* have directed that such assistance reach us chose deliberately not to do so.

That fact highlights the essential lesson of Tehran; unless we can be assured that the host government's assurances of security protection will be implemented, no amount of hardening of our defenses will prove effective. Our marines by themselves cannot be expected under circumstances in a place such as Tehran to put up effective resistance for more than a few hours. Their purpose is to buy time until security assistance can be mounted. We have applied that lesson since that time in at least one place and that is Tripoli, where we have withdrawn our personnel because we could not be assured that the host government there would meet its responsibilities under International Law, should an attack by terrorists occur.

I do not mean to suggest that we have not learned from Tehran, nor that we could not have done certain things differently. I believe there are things that we should have done that we did not do, possibly giving us additional time for destruction of documents for example. But the end result in my view would not have been different from what tragically it was.

Nor do I mean to suggest that the main thrust of your article is not justified. Indeed it is; there is still more that needs to be done to strengthen the security protection of our diplomatic personnel, and their families, overseas. Much is being done by the Department of State, with increasing cooperation of the Congress, and I am sure you welcome this as much as I do.

Equally essential, however, is that progress be made in the resolution of the political issues in areas such as the Middle East that in the final analysis are among the root causes of the terrorism that today is such a constant threat.

Sincerely yours,

L. Bruce Laingen,
Vice President.

Justice **Goldberg**. And then I would also like to offer for the record my letter and read a few excerpts. I will not read it all. I will read a few excerpts. Your time is limited.

I said:

> My statement that the weapons of the Marines assigned to Tehran were under lock and key was based on press reports. I, of course, accept your more accurate statement that arms and antiriot equipment were kept in a secure area within the chancery.

And I later said:

> This is a distinction without a difference. The fact is, as your letter acknowledged, that the arms and antiriot equipment were not visible in the hands of the Marines assigned to the chancery and further that the Marines were expected to be out of uniform, unarmed and unobtrusive. That was in my view an entirely unrealistic appraisal of what was happening in Tehran.
>
> You confirm that the gates were manned by Iranian policemen. These policemen, as I said, when the mob approached our compound, opened the gates and permitted the mob to take over and capture the embassy personnel on duty and keep them hostages for an extended period to their great injury and the profound embarrassment of our government and the American people who still smart under that spectacle. The great United States cannot protect an embassy in a revolutionary situation.

The first explanation of the State Department about the situation in Iran was that the marines' only function was to protect our codes. This is nonsense. In the first place, they did not protect the codes. The mob broke in, got all the codes. Our Embassy, for reasons unknown to me, did not destroy classified material, which they should have done immediately. And I do not know, Mr. Chairman and Senator Specter, whether you have had the opportunity to read the yellow book published by the Iranians reproducing our telegrams. They captured all of our classified material and it was very embarrassing to our Government to have our own top secret material published.

Now, Mr. Chairman, the excuse by the State Department for not adequately protecting our Embassies, and I come to what happened yesterday at Beirut, is that the number of military we can assign is limited. Why? We have over 2.5 million men and women under arms. As an officer in World War II, I can say that, despite advances in technology, if a soldier goes through basic training three times, he is bored. We have ample forces to protect our Embassies, without prejudicing their readiness for combat. And it will not cost us anything. They are being paid and a large number of them are abroad. And they get paid with living allowances, and so on. So expense is not the criteria.

I turn to yesterday. I am critical of the democratic administration for what happened in Iran. I am equally condemnatory of what happened yesterday in Beirut. The press reports that State Department spokesmen are again resorting to the traditional doctrine, that the host country is required to protect our Embassies. What kind of government is there in Lebanon. We hope there will be a truly functional one, but realistically there is a government in name only at the present time. Neither is tenable.

The press reports that yesterday there was one Lebanese policeman stationed outside of our Embassy, that the 14 marine guards were located inside the compound; third, and most importantly, it indicates that the outer gate was open, and the inner gate not installed. This enabled the terrorist to get through the outer gate. Fortunately, he was shot and killed by the security officer of the British Ambassador who was visiting our Embassy. Peculiarly, no marine seems to have fired a shot nor did the Lebanese who were hired to provide security.

Two explanations were offered by the State Department. One is the van of the terrorist had diplomatic, Dutch license plates. Any experienced person dealing with terrorism knows that it is easy for them to steal or manufacture diplomatic license plates. Had the gates been installed and closed and a buzzer system installed, and an adequate and armed marine guard in place, they could have called the duty officer and said, are you expecting a Dutch diplomat? If the answer were no, then the terrorist could not have penetrated the outer gate. Moreover, the 14 marines would have been alerted that something dangerous was happening and taken preventive action, particularly in light of the suicide attack on the marine contingent last year.

I must add in all candor that Congress bears part of the responsibility. I do not say you, Mr. Chairman, or you, Senator Spector, are. But there was congressional pressure to remove the marines from the green line and this seemed to extend to the marines who were guarding the Embassy. As a result, most of the marines were removed. We had every right to keep the marines in place. Our Embassy is part of the United States. It is our property and we have every right to protect it against terrorism.

In light of the chaotic situation in Lebanon, even though we moved our Embassy from West Beirut to East Beirut on the assurance of President Gemayel that it was safe to do so, any experienced diplomat or journalist would know it was foolhardy to accept this assurance, however well intentioned. We have every right to defend ourselves and protect our people.

Do you know what the French did, Mr. Chairman and Senator Specter, under similar circumstances when their Embassy was stormed? They sent a company of French paratroopers to provide security for their Embassy, and I have not seen the Embassy assaulted since. So I would hope, Mr. Chairman, because you are dealing with terrorism, that we come to grips with providing adequate embassy security. The great United States can afford to do so.

And I am also perturbed, according to press accounts about yesterday's events, that the roadblocks which we have at the White House now were not in place. Why did it take so long? In light of past experience, it should have been done overnight.

The argument is made—I heard a State Department press officer say, we want to keep the Embassy open.

Well, we all want to keep Congress open for the American people. I passed through an electronic device in order to get in here and properly so in an age of terrorism. Our Embassies can be open and still be similarly protected. I feel a sense of great sorrow about the deaths that occurred, two Americans and I do not know how many Lebanese employees. I have read various figures, 14, 20 locals. But the Lebanese who worked for us and who were applying for visas, these Lebanese were our responsibility.

I cannot accept the explanation that we were engaged in improving security. We had plenty of time to do so. All deliberate speech is not enough. In matters such as this, one must disregard the shiboleths of the past and deal with the realities of a world afflicted with the enormous incidence of terrorism. I raise the question of whether the steps taken by the State Department and our armed forces are adequate to protect men and woman we send abroad in our national interest.

My conclusion is that the State Department and the Defense Department, in the three terrorist incidents in Beirut, were negligent, derelict in the performance of their obligation to protect our people, and that their explanations do not hold water.

Now, Mr. Chairman, I will turn to my formal testimony. My formal testimony and letters relating thereto will be offered for the record.

Senator DENTON. The letter you wrote in response to the previous one mentioned as entered in the record will be entered in the record without objection.

[The following letter was submitted for the record:]

February 22, 1984.

Hon. L. Bruce Laingen,
Vice President, Department of Defense,
National Defense University, Washington, DC.

Dear Mr. Laingen: It is indeed most kind of you to take the trouble to comment on my recent article in the Christian Science Monitor about the security or lack of it at American Embassies and Ambassadorial Residences abroad. I know that you share my concern about this matter.

In responding to your letter, I should like to make it clear that it was not my intention to criticize the actions of the personnel of our Embassy at Tehran at the time of the take-over.

From my own experience, both at the United Nations and at Belgrade, I assumed you and your colleagues at our Embassy in Tehran were following directives of the Department.

I received at Belgrade similar instructions to those you must have received from the Department, namely, not to arm the marines assigned to me, because I was on the "hit list" of the PLO, and to make the marines unobtrusive. The Department stated that I was to rely for security on the host country.

The security provided by Yugoslavia at Belgrade for my residence was minimal. The Yugoslav police assigned for this purpose appeared at the residence very occasionally—perhaps two times a week. Accordingly, I disregarded the cable from the Department and instructed the marines assigned to me to guard the gates to my residence armed with anti-terrorist equipment and to be visible in full uniform at all times, with their armament prominently displayed. I cannot say this was the cause, but no terrorist incidents occurred during my approximately six months' stay in Belgrade as Ambassador at Large and Chairman of the Delegation to the Helsinki Conference then underway.

To turn to your specific observations, I have this to say:

My statement that the weapons of the marines assigned to Tehran were under lock and key was based, as I said, on press reports. I, of course, accept your more accurate statement that "arms and anti-riot equipment were kept in a secure area within the Chancery."

This is a distinction without a difference. The fact is, as your letter acknowledges that the arms and anti-riot equipment were not visible in the hands of the marines assigned to the Chancery and, further, that the marines were expected to be "unobtrusive." This was, in my view, an entirely unrealistic appraisal of what was happening in Tehran.

I do not have to remind you that a revolution was underway in Tehran and that our Chancery and Embassy Residence were at risk. Your further statement that some of the marines assigned to the Embassy were off duty and that the Chancery was located in a large, 27-acre compound, reinforces my opinion that much greater security was required than provided.

You confirm that the gates were manned by Iranian policemen. These policemen, as I said, when the mob approached our compound, opened the gates and permitted the mob to take over and capture the Embassy personnel on duty and keep them hostages for an extensive period to their great injury and the profound embarrassment of our Government.

You argue in your letter that the marines assigned were not a sufficient force to protect against such a mob. I served in World War II and I can say to you that properly armed and equipped, a small military detachment can hold off a large mob if ordered to do so. Further, in light of what was occurring in Tehran, known to all, the marine detachment should and could have been reinforced before the break-in. I pointed out in my letter than when the French were faced with a comparable situation, they deployed a company of paratroopers to guard their embassy. These paratroopers were armed and equipped so that an assault by a mob would have been extremely hazardous.

I did not mention in my letter that, according to the press, despite the obviously deteriorating situation, our Embassy was staffed with far too many men and women. The obvious course would have been to withdraw virtually all of our personnel in light of what was taking place.

Further, the Department issued a statement, at the time, stating that the function of the marines was to guard our code room and protect classified documents. Since the marines on duty were not armed, the mob obtained possession of our code room, seized our ciphers, thereby endangering our communication security, and also were able to obtain possession of innumerable classified documents. These have been published, again much to the embarassment of our Government. Why the ciphers and documents were not better secured has never been explained.

I should like to make this further observation. We are a super-power. There are over 2 million men and women in our armed services. Except for inter-department bookkeeping, there is no real additional cost in deploying adequate military forces to safeguard our diplomatic personnel abroad. Marines should have no monopoly in this important task. There is no reason why, like the French, we cannot assign trained personnel, on a rotating basis, to afford protection.

Again reverting to my World War II experience, this would be most welcome to members of our armed forces, since in peacetime, continuous training becomes boring.

Parenthetically, I notice your reference that the marine guard were not located on the Embassy compound. The same was true in Belgrade, but, since I was told that I was at risk, I housed the personnel in my own residence, rather than in the marine house. To say the least, this was more than satisfactory to my marine guards, because my cook provided better food than they were furnished at the marine house.

I hope that you are right that our security arrangements have been strengthened. Better late than never!

In conclusion, it goes without saying, that I agree that an underlying cause is the lack of resolution of the political issues in the Middle East. With respect to Iran, I am sure you will agree that this is going to be a long and arduous diplomatic task. Further, even if there is peace, this is no guarantee that acts of terrorism will not occur.

Sincerely,

ARTHUR J. GOLDBERG.

Justice GOLDBERG. Thank you. Now I address myself to your invitation to speak to you on the subject of diplomatic immunity. This is essentially involved in the legislation which you have introduced, S. 2771, by yourself and by Senator Specter. In your letter to me, Mr. Chairman, you stated that S. 2771 is an outgrowth of the terrible incident in Lebanon last spring wherein a British policewoman, unarmed, in accordance with British custom, was killed and several innocent demonstrators were wounded by a self-designated Libyan diplomat who fired automatic weapons from the window of the Libyan so-called embassy.

Now, you will recall, Mr. Chairman, that Prime Minister Thatcher's government and the police stated that they could not do anything about it except terminate relations because of diplomatic immunity under the Vienna Convention. Now, I have had the honor of serving on the Supreme Court and have been a lawyer of 53 years standing. During my tenure as an Associate Justice of the Supreme Court I wrote the majority opinion of the court in the case of *Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144. In this opinion I wrote for the Court that while the Constitution protects against invasion of individual rights, it is not a suicide pact. The same is true of the Vienna Convention.

I yield to no member of the court my record in defense of fundamental rights and civil rights. I wrote many opinions in support of it.

Nevertheless our Constitution, because of express language, not only in the preamble but in the body, requires all of us and particularly all in the Government to protect the general welfare and provide for the common defense. And today common defense means not only against an invasion; it means against terrorists, too, as we learned yesterday.

I apply ordinary and accepted rules of construction to the Vienna Convention. It would be entirely unrealistic and contrary to the spirit and intent of this convention to construe the convention as a blanket immunity to spurious diplomats, spurious embassies, and spurious diplomatic bags of state engaged in or sponsoring terrorists. In the interest of time, I am not going to read my whole statement. With your permission, I will offer it all for the record.

Senator DENTON. It will be in the record, Justice Goldberg.

[The prepared statement of former Supreme Court Justice Goldberg follows:]

PREPARED STATEMENT OF FORMER SUPREME COURT JUSTICE ARTHUR J. GOLDBERG

Mr. Chairman and Distinguished Members of the Subcommittee:

Under date of July 18, 1984, the Chairman of this Subcommittee, Senator Jeremiah Denton, requested that I testify on the subject of diplomatic immunity and its relationship to S.2771, introduced in the Senate by the Chairman and Senator Arlen Specter.

In the Chairman's letter to me, he stated that S.2771 is an outgrowth of the terrible incident in London last Spring, wherein a British policewoman was killed and several innocent demonstrators were wounded by self-designated Libyan "diplomats" who fired automatic weapons from inside the Libyan embassy.

Before analyzing the application of the Vienna Convention on diplomatic immunity to state-sponsored international terrorism, such as occurred in London, and before dealing with S.2771, I should like, to make some brief preliminary comments.

During my tenure as an Associate Justice of the Supreme Court of the United States, I wrote the majority opinion of the Court in the case of Kennedy v. Mendoza-Martinez, 372 U.S. 144. In this opinion, I wrote, for the Court, that, "while the Constitution protects against invasion of individaul rights, it is not a suicide pact."

In this opinion, I emphasized that while the Constitution is the ultimate safeguard of our liberties, it is not to be interpreted to render our nation impotent to provide for the common defense as well as the general welfare.

The Vienna Convention, like our Constitution is not rationally to be construed as a suicide pact, leaving the international community helpless to cope with international terrorism. It would be entirely unrealistic and contrary to the spirit and intent of this Convention to construe the Convention as a blanket immunity to spurious diplomats, spurious embassies and spurious diplomatic bags of states engaged in or sponsoring terrorism.

By established legal doctrine, treaties, like constitutions and statutes, must be read as a whole.

Nothing could be more foolish than to accept simple-mindedly a literal reading of the Convention. The privileges and immunities granted by the Convention are rights declared in words, but rights declared in words must not be lost in reality.

State-initiated or sponsored terrorism is a clear and present danger to the democratic traditions and institutions of our country and other democratic countries as well.

That it is a clear and present danger there can be no doubt. 5 American Ambassadors have been murdered by terrorists who received their training, weapons and financial support from totalitarian countries.

The most flagrant example of state-sponsored terrorism is what occurred in Iran when 52 of our Embassy personnel were detained as hostages for 444 days. This was not only a tragedy for them but an unparalled humiliation for our country and for all of us.

The questions before this Subcommittee basically, therefore, are: Are the civilized nations of the world impotent to cope with international terrorism because of the Vienna Convention? Is it a violation of the Vienna Convention for a country, like the United States, to enact domestic legislation designed to effectuate the spirit and intent of the Vienna Convention, which, in express terms is designed to afford immunity to legitimate diplomatic actions -- not premedidated murder? Is domestic legislation to this end a violation of our cherished Bill of Rights?

My answer to these questions is an emphatic No.

My rationale for this answer, is perhaps best explained by an analysis of the Libyan shootout in London.

It is to be recalled, that two gunmen in the Libyan self-styled "People's Bureau," in London opened fire on a crowd of anti-Qadaffi demonstrators. These demonstrators were conducting a peaceful protest, as permitted by law, on a sidewalk adjacent to the Libyan People's Bureau. The gunmen inside, in plain view, from an open window, riddled them with automatic gunfire, killing Constable Fletcher and wounding eleven others. The young, unarmed policewoman was shot in the back. She was facing the demonstrators to keep them in order and provide security for the Libyans. Ten days after this barbaric incident, the British Government provided the killers* and their murder weapons with safe passage out of the country.

Ironically, on the same day that British police escorted the murderers to Heathrow Airport, Constable Fletcher was buried. Truly, it was a day of infamy. At her funeral the Home Secretary, Mr. Leon Brittan, stated that the British police were prevented under the terms of the Vienna Convention on Diplomatic Relations from storming the so-called People's Bureau to apprehend the killers and bring them to justice. Mr. Brittan claimed Her Majesty's Government could not act because the murders, the premises of the People's Bureau, and the bags within which the lethal weapons were concealed were all immune according to the Convention. His view was reaffirmed in the debate on this issue in the House of Commons by Prime Minister Thatcher and the Foreign Secretary.

The intent and purpose of the Vienna Convention is to grant immunity only to bona fide diplomatic agents, to bona fide embassies and to bona fide diplomatic bags, but not to terrorists masquerading as diplomats. In my view, supported by legal precedents, the two Libyan killers, the People's Bureau that housed them, and the pouches that contained their weapons are not afforded immunity by the Treaty.

Libya's London embassy was seized some time ago by Qaddafi's self-styled revolutionary student adherents. In a letter sent by the Foreign and Commonwealth Office of Great Britain, dated 24 July 1984, in response to a communication sent by my research assistant, David L. Stebenne, at my express authorization, asking the direct question of whether the killers were entitled to diplomatic immunity, the Foreign Office responded with an emphatic No. Copies of these letters are attached.

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*Although Constable Fletcher was killed by a single shot, both gunmen were legally guilty of murder since they joined together in a felonious attack.

Under Article 4, Section 1 of the Vienna Convention, the host country has the right before accepting and accrediting a diplomat to review his nomination and, if deemed unacceptable, to refuse accreditation.

The British police, after a most summary interview with the Libyans, conducted shortly before they departed, issued a statement saying they were diplomats. How the police arrived at this conclusion is not clear. Diplomatic passports are not conclusive evidence on this point. I, myself, for example, due to long government service, have been issued a diplomatic passport by the State Department as a courtesy. I am certainly not, however, a diplomatic agent as defined by the Vienna Convention.

Since the murderers were not accepted as diplomatic agents, then they were not bona fide diplomats entitled to the privileges and immunities afforded by the Vienna Convention.

Even, arguendo, if the Government of Great Britain did accept the killers as diplomatic representatives, their conduct as terrorists and murderers, under any evolving concept of international law, constituted a forfeiture of any right to be recognized as bona fide diplomatic agents.

But, as the Home Secretary pointed out to the press and the House of Commons, there was also the issue of an embassy's inviolability. He claimed that the British police under the Vienna Convention could not storm the so-called Libyan People's Bureau to capture the killers and confiscate their weapons as material evidence. Once again, I must disagree. Colonel Qadaffi's People's Bureau in London can scarcely qualify as a bona fide embassy whose premises are inviolable under the Vienna Convention.

Further, the letter I received from the Foreign Office, through my research assistant, states categorically that none of the persons in the Libyan People's Bureau were accepted or accredited diplomats. It follows that none of them, including the killers, were entitled to diplomatic immunity under the Vienna Convention, nor was the

People's Bureau or its so-called diplomatic bag, harboring the murder weapons, vital evidence in a prosecution.

The London People's Bureau, according to reliable evidence, harbored assassination teams directed by Qadaffi against Libyan dissidents. Murder factories of terrorists are not embassies, and therefore do not come within the scope of the Vienna Convention. That treaty is designed to grant immunity to a real embassy devoted to diplomatic relations. Article 41, Section 3 of the Convention states that the "premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the .... Convention or by other rules of international law ...." Harboring hit squads clearly does not come within the protection of that provision.

The People's Bureau in London therefore was not a bona fide embassy. It was, in my opinion, subject under established rules of international law, to search and seizure by the British police after the brutal murder of Constable Fletcher and the wounding of peaceful demonstrators on the sidewalk.

The Home Secretary also claimed that the diplomatic bags could not be searched, despite official statements that the murder weapons were undoubtedly brought into the country in diplomatic bags and then secreted within them and thus spirited out of Great Britain. While Article 27, Section 2 of the Convention states that diplomatic bags are inviolable, another related provision, Section 4, states that a diplomatic bag "must contain only diplomatic documents or articles intended for official use." Murder weapons hardly meet that requirement. And, of course, the various provisions of the Convention are intended, as I explained at the outset, to be read together under settled rules of treaty interpretation.

It defies reason to interpret the Convention so as to prevent the opening of a diplomatic bag where there is substantial evidence, that it contains murder weapons, or, for example, conventional or nuclear bombs. Any other interpretation of the Convention means that, by a too liberal application of its terms, rather than a sensible one, we could all go up in smoke, since diplomatic bags could be used to secrete such weapons. And there is substantial evidence that diplomatic bags are being abused, by some countries, to harbor murder weapons or other non-diplomatic material.

Apparently as a result of a storm of criticism by the British people and in the British press, the British Government now has embarked upon a different course with respect to the immunity of diplomats. Recently there was an attempt to spirit out of Great Britain a former Nigerian official wanted in his country for charges of corruption. In this very bizarre episode, he was drugged and placed in a crate, which was labeled and sealed a a Nigerian diplomatic bag. Notwithstanding, the British Government properly opened the crate, stating that it was not inviolable under the Vienna Convention and rescued this Nigerian former official. If the Libyan example has been followed, the diplomatic crate would have been regarded to be inviolable and the crate, with the drugged Nigerian, dispatched to Nigeria in the Nigerian cargo plane standing by to receive it.

The contrast between the treatment of the so-called Nigerian diplomatic crate and the Libyan so-called diplomatic bag harboring the murder weapon is not explainable, except that the British Government must have belatedly decided immunity to the Libyan diplomatic bag, containing the murder weapons, was not tenable.

Further, the West German Government recently detained Soviet crates labeled as diplomatic bags because of information that they contained classified equipment embargoed for shipment to the Soviet Union. After a protracted standoff, the Soviet Union permitted the West German Government to inspect the contents of these crates. Thus, the Vienna Convention was not interpreted to prevent such an inspection.

When the Libyan killers struck last April, the British Government could, in my opinion, within the terms of the Vienna Convention, have raided the People's Bureau, arrested the murderers and seized the material evidence.

I am not alone in this opinion. Lord Denning, former Master of the Rolls, a distinguished jurist, recently retired, in an interview with the British press independently came to the same conclusion.

Why then did officials at the highest levels of the British Government consistently state that they could not bring the killers to justice because of the Vienna Convention? There are reasons never officially stated.

One is that the British Government was concerned about the safety of the British mission in Libya and that of the 8,000 Britons who elected, of their own will, to stay in Libya for pecuniary reasons.

I believe that this fear was unfounded. The United States some time ago, broke off relations with Libya. It is an understatement to say that we Americans are more at odds with Libya and its demented leader than is Great Britain. Notwithstanding the freeze in U.S.-Libyan relations, over one thousand Americans still reside in Libya to assist in operating the oilfields and other commercial enterprises. They do not appear to be in danger, nor do the American diplomats who remain in Tripoli, lodged at the embassy of a friendly government, in what diplomats call a "Special Interests Section." Colonel Qadaffi clearly values the technological help Americans provide. This is also certainly the case with respect to the several thousand Britons who have elected to stay in Libya. Other European countries such as France and Italy also have many nationals who reside in Libya and have gone unmolested.

The second and almost inescapable conclusion is that the British Government acted as it did to protect its commercial interests in Libya, rather than for its stated reason that diplomatic immunity protected the killers.

This is an unacceptable justification. Both diplomats serving abroad and persons electing to remain and serve commercial or their own financial interests in foreign countries assume the risk of doing so, particularly after their governments have warned them of the dangers involved.

The only step Britain has taken in response to this horrible crime was to sever diplomatic relations with Libya.

Under the circumstances, this was simply a slap on the wrist. Business as usual is continuing between Great Britain and Libya. Some British diplomats will remain in Libya, housed as a "Special Interests Section" in a friendly nation's Tripoli embassy. Similarly, a number of Libyans will no doubt remain in London, also under a "Special Interests" arrangement.

Surely, this terrible act of terrorism deserved more of a response than that. Libya has embassies and consulates all over the globe, many of which are now under the control of Qadaffi supporters, like those who, until very recently, inhabited the London People's Bureau. Colonel Qadaffi has shown himself to be on the world's foremost proponents of state-supported international terrorism and he is supporting terrorists with vast supplies of arms from the Soviets, which greatly exceed the amount legitimately needed for Libyan self-defense.

And after the expulsion of the Libyan terrorists, Qadaffi openly stated that he was dispatching more hit squads abroad and, on television, obscenely welcomed the killers of Constable Fletcher as heroes.

Also, of continuing concern, is the possibility that Qadaffi may develop, purchase or purloin a nuclear weapon for use as the ultimate weapon of terror and conceal it in a diplomatic bag. Hopefully, this will not happen. But we must be on guard and eternally vigilant.

The real issue is how civilized nations can combat this terrible threat to human freedom, survival and the rule of law. Experience teaches that the Thatcher government's weak response to Libyan terrorism was the worst way to respond to state-supported terrorism. Terrorist blackmail must never be countenanced.

The British Government, probably to allay the justifiable outrage of the general public, stated that it would seek amendments to the Vienna Convention to take account of the abuse of diplomatic credentials and privileges by those countries which support terrorism. The practical problems involved in amending the Convention militate against such an approach; the Soviet Union, its allies, the Arab States and many neutral and non-aligned countries will not agree to any amendments. Certainly Libya and other terrorist states most certainly will not endorse amendments. In my opinion, amendments are not necessary for the reasons I have stated.

The British Government is subject justifiably to criticism for its unfounded reliance on the Vienna Convention to excuse its failure to act against Constable Fletcher's murderers. That explanation, which I believe to have to be disingenuous, only serves to blur the distinction between lawless killers and terrorists and responsible, accredited representatives of law abiding governments. And that confusion poses a great danger, for when citizens and subjects are told by democratic governments that there is no difference between the two, the result is to breed disrespect for the rule of law and for bona fide diplomatic immunity. The price Britain and other civilized countries pay when they choose to submit to terrorist blackmail, under the subterfuge of spurious diplomatic immunity, encourages rather than deters terrorism.

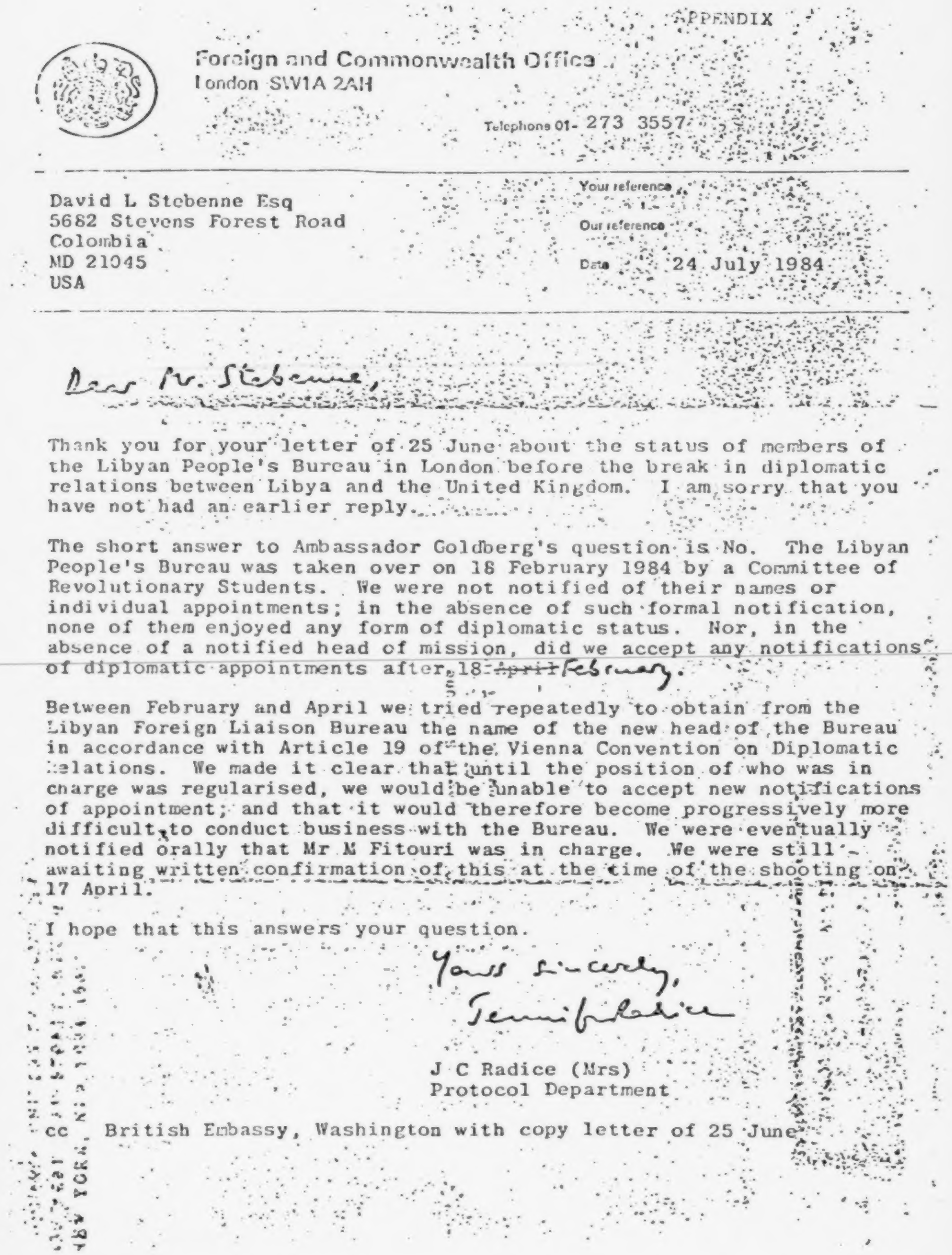
Having served, as an American officer, in Britain, during the dark days of World War II, I know what kind of people the British are. But, as a result of the conduct of its government in the Libyan shootout, I greatly fear that Qadaffi and other terrorists do not. The Libyan shootout and the manner it was handled is a most dangerous precedent in the war against terrorism. Terrorism, unless checked, breeds further terrorism.

It has been intimated that, in light of this, the way to fight terrorism by democratic countries is by extra-legal means. I emphatically disagree.

Democratic countries, under accepted norms of international law and appropriate legislation, can, by and large, cope with terrorism by legal means, provided they have the will to do so, putting commercial and material interests aside.

The preferable way to fight international terrorism is by an international fire brigade to suppress wanton fire and arson -- the illegal methods of terrorists. Absent a coordinated and effective international terrorism program, no country can be faulted for attempting to deal with this problem, as best it can, excluding extra-legal measures. We must bear in mind that although we cannot change terrorists; they must not be allowed to change us. Our war against terrorism is to be waged to preserve democratic values and to adherence to the rule of law, not to diminish or impair our cherished values. The arsenal of legal weapons available to democracies is formidable, to limit if not to curb terrorism, if there is the resolve to do so and sufficient resources are employed.

S. 2771 is an appropriate legal weapon. And, while I am of the view that further refinement of the proposed legislation is desirable, to allay the fears of opponents, I, in principle, endorse this legislation.



APPENDIX

Foreign and Commonwealth Office
London SW1A 2AH

Telephone 01- 273 3557

David L Stebenne Esq
5682 Stevens Forest Road
Colombia
MD 21045
USA

Your reference
Our reference
Date 24 July 1984

Dear Mr. Stebenne,

Thank you for your letter of 25 June about the status of members of the Libyan People's Bureau in London before the break in diplomatic relations between Libya and the United Kingdom. I am sorry that you have not had an earlier reply.

The short answer to Ambassador Goldberg's question is No. The Libyan People's Bureau was taken over on 18 February 1984 by a Committee of Revolutionary Students. We were not notified of their names or individual appointments; in the absence of such formal notification, none of them enjoyed any form of diplomatic status. Nor, in the absence of a notified head of mission, did we accept any notifications of diplomatic appointments after 18 ~~April~~ February.

Between February and April we tried repeatedly to obtain from the Libyan Foreign Liaison Bureau the name of the new head of the Bureau in accordance with Article 19 of the Vienna Convention on Diplomatic Relations. We made it clear that until the position of who was in charge was regularised, we would be unable to accept new notifications of appointment; and that it would therefore become progressively more difficult to conduct business with the Bureau. We were eventually notified orally that Mr M Fitouri was in charge. We were still awaiting written confirmation of this at the time of the shooting on 17 April.

I hope that this answers your question.

Yours sincerely,
Jennifer Radice

J C Radice (Mrs)
Protocol Department

cc British Embassy, Washington with copy letter of 25 June

C
O
P
Y

June 25, 1984

Protocol Department
Foreign and Commonwealth Office
London SW1, ENGLAND

To Whom it May Concern:

I am a research assistant to former United States Ambassador to the United Nations, Arthur J. Goldberg. Ambassador Goldberg asked me to find out for him whether the Libyans in charge of the Libyan People's Bureau in London at the time of the shooting last April had in fact been accepted and accredited as diplomatic agents pursuant to the Vienna Convention on Diplomatic Relations.

As you are no doubt aware, Article Four of the Vienna Convention states that the receiving country must accept and accredit the person the sending country wishes to have head its Mission. Press accounts describe the group in charge of the Libyan People's Bureau at the time of the shooting as a "revolutionary committee." I wish to know, if I may, whether the members of that revolutionary were ever accepted and accredited by Her Majesty's government.

I telephoned your office from Washington, D. C. with this question and was informed that I must submit my request for this information in writing. I would greatly appreciate any information you could provide which would answer this question. Thank you.

Yours sincerely,

David L. Stebenne

5682 Stevens Forest Road
Colombia
Md 21045
USA

Justice **GOLDBERG**. What interested me a great deal as I looked into the problem was the statement of the British Government, accepted by our Government, because I read the testimony of the legal advisor to the Secretary of State, that the Vienna Convention precluded the British police from arresting these killers, from going into the so-called Embassy, the People's Bureau, and from opening the bag, so-called diplomatic bag, to get the murder weapon.

As far as I am aware—I have read the leading British and American newspapers and have corresponded with the British Foreign Office to determine whether indeed this was the basis of their position. And the answer was yes.

Now, I had a research assistant this summer who is a second-year law student at Columbia; he was in Washington and helped me prepare an address which I delivered at the Jonathan Institute on Terrorism. I asked him just to footnote my article, wherever I said, "According to newspaper reports," and so on. I do not save clippings.

But then I had a thought. I said, write to the Foreign Office and ask a question for me. The question I wanted to raise with the Foreign Office was: Were the killers accepted diplomats under the Vienna Convention? Was the Embassy a real Embassy? These are the questions I asked. It will be recalled that the Prime Minister, other ministers, and the police said that the killers could not be brought to justice because of diplomatic immunity.

Supplementing my testimony, which will be in the record, I would like to read you two very interesting letters exchanged since my testimony was prepared. The first communication is a letter from my research assistant to the British Foreign Office:

> I am a research assistant to former United States Ambassador to the United Nations Arthur J. Goldberg. Ambassador Goldberg asked me to find out for him whether the Libyans in charge of the Libyan People's Bureau in London at the time of the shooting last April had in fact been accepted and accredited as diplomatic agents pursuant to the Vienna Convention on diplomatic relations.

And then my assistant said:

> As you are no doubt aware, Article Four of the Vienna Convention states that the receiving country must accept and accredit the person the sending country wishes to have at its mission.

Obviously, a host country may say such a person is persona non grata and has done so on occasion. That is a right preserved under the language of the Vienna Convention.

And then he says:

> Press accounts describe the group in charge of the Libyan People's Bureau at the time of the shooting as a "revolutionary committee." I wish to know, if I may, whether the members of that revolutionary committee were ever accepted and accredited by Her Majesty's government.

That letter is now attached to my testimony. Well, after quite a bit of delay, I received this rather astonishing letter, I must say, from the British Foreign Office.

> Thank you for your letter of 25 June about the status of members of the Libyan People's Bureau in London before the break in diplomatic relations between Libya and the United Kingdom. I am sorry that you have not had an earlier reply.
>
> The short answer to Ambassador Goldberg's question is NO.

I emphasize "No" because it is in caps.

> The Libyan People's Bureau was taken over on 18 February 1984 by a committee of revolutionary students. We were not notified of their names or individual appointments. In the absence of such formal notification, none of them enjoyed any form of diplomatic status. Nor, in the absence of a notified head of mission, did we accept any notification of diplomatic appointment after 18 February.
>
> Between February and April we tried repeatedly to obtain from the Libyan Foreign Liaison Bureau the name of the new head of the bureau in accordance with Article 19 of the Vienna Convention. We made it clear that until the position of who was in charge was regularised, we would be unable to accept new notifications of appointment and that it would therefore become progressively more difficult to conduct business with the bureau. We were eventually notified orally that a Mr. M. Fitouri was in charge. We were still awaiting written confirmation of this at the time of the shooting on 17 April.

This is from the British Foreign Office. Although the British Parliament and the British public have been told that the terrorists enjoyed diplomatic immunity, this letter establishes the following on the Libyan shootout: One, the killers did not have diplomatic immunity under the Vienna Convention. The British did not even know their names until they expelled them. Police said they were diplomats. Apparently, the police determined that the killers had diplomatic passports. But the possession of a diplomatic passport, however, does not make the holder a diplomatic agent under the Vienna Convention. The State Department and the White House, in their kindness, have given me a diplomatic passport as a courtesy. It says I am a former Justice, Ambassador, and I am not accepted or accredited to any country. It follows that I am not a diplomatic agent under the Vienna Convention. The convention is very clear on this crucial point. The acceptance concept permits the host country to deny acceptance to a proposed diplomat who is regarded to be persona non grata.

The letter from the British Foreign Office establishes that the killers were not accredited diplomats accepted and accredited. Acceptance is the key word. Accreditation is a formality. An ambassador goes to the queen or in this country to the President to present his or here credentials for the formality of accreditation. Does the host country accept—because if it does, he is entitled to diplomatic immunity even before he is accredited after he arrives in the host country.

So, No. 1, the killers were not accepted diplomats. The second conclusion, which is also quite obvious from the British letter, is that the so-called embassy was not an embassy. It was manned by a group of people whose names were unknown to the British. They might have been squatters. And the Vienna Convention has precise language. A diplomatic Embassy is inviolable. But it has to be a diplomatic Embassy and there is language in the convention that described their function: to conduct diplomatic business. And in order to conduct diplomatic business, they have to be accepted so that people in the host country know who they are dealing with: accepted diplomats.

No. 3, it necessarily follows that the so-called Libyan diplomatic bag that the British said was immune from search, containing the murder weapons, were not diplomatic bags at all. Diplomatic bags can only emanate from an Embassy, a real Embassy. Otherwise you could put a diplomatic seal on a bag of a country which has no accepted diplomats and has no embassy.

Mr. Chairman, you and Senator Specter have offered a bill, S. 2771, designed to prohibit egregious abuses of diplomatic immunity. Your bill is designed to combat terrorism and, at the same time, to safeguard genuine diplomatic immunity.

I approve of the objective of S. 2771. I have some trouble with the problems in your bill articulated by the State Department representative who testified before this committee.

Prime Minister Thatcher told the House of Commons she was appointing a panel to look into the question of an amendment to the Vienna Convention. According to the press, a panel of international lawyers stated that realistically, there was no possibility of reaching agreement on amendments. I concur with this conclusion. Amendments would have to be submitted to the International Law Commission of the United Nations. This Commission would either bury the bill or afford greater protection.

At the summit conference that was held last June to deal with terrorism, it was said that every country ought to look at what we can do domestically. And I take it this is the purport of S. 2771.

This bill needs rather extensive redrafting to achieve its commendable and dual objective: to combat state-supported terrorism and, at the same time, to protect.

For example, I undoubtedly would suggest an amendment to the bill, that actions in self-defense are not precluded by the bill. I would want to analyze S. 2771 more carefully for other problems, but I think it is terribly important, judging by the British experience, that we do not apply the Vienna Convention to situations where, as the letter from the British Foreign Office shows, it clearly is not applicable. There was no diplomatic immunity of the killers in Great Britain.

And, reading the testimony before your committee, I question the action of our State Department accepting at face value the statement of the British Government that there was diplomatic immunity. This encourages state-supported terrorism, because there was not.

Finally I will conclude with a statement about Senator Specter's approach. I have not studied it, but I am sure he remembers that President Thomas Jefferson sent the marines to crush the Barbary pirates. They were pirates. They were international outlaws.

Have we not reached the stage, when according to good legal doctrine, even with respect to an accredited diplomat who stands in the window and fires an automatic weapon at innocent demonstrators and kills a policewoman protecting her, does he not forfeit it under conventional rules of law? Has he not forfeited his immunity?

That is the question which deserves study. Under ordinary rules of law in our domestic jurisdiction, a police officer, for example, is entitled to defend himself. He is entitled to do many things a citizen cannot do with his arms. But if he wantonly were to stand in a window and shoot a bystander, he would be tried, I am sure, if you were still a prosecutor, by you, Senator Specter, for a wanton murder. He forfeits his prerogative as a police officer for committing an unprovoked, wanton murder.

I am sure that this committee, the chairman, and you, Senator Specter, are not tied to the specific language of your bill. It requires revision. I made one suggestion; I could make others.

I also express the hope Congress would assert its authority over foreign affairs. No. 1, insist that our Embassies get real protection. Do a real inquiry and not accept the traditional view that host countries protect you when there is no host country with a government of its name.

And I would hope, second, that there would be a real scholarly interpretation of the Vienna Convention, because when I first started to write the article, every international lawyer I talked to, disregarding that as a Justice of the Supreme Court I wrote opinions on international affairs and as an ambassador conversant with such affairs, said right off, oh, the Libyans in the shoot-out have diplomatic immunity.

It would be a great contribution if this subcommittee, which is dealing with terrorism and state-supported terrorism, would commission a group of scholars to outline the dimensions of the Vienna Convention.

It serves the cause of terrorism and not the rule of law to which I am devoted glibly to assume that any type of building, like the People's Bureau, is an embassy, glibly to assume that killers who stand in the window and fire automatic weapons and kill an unarmed policewoman are entitled to diplomatic immunity, even though they are not accepted diplomats.

The British Foreign Office knew they were not accepted diplomats. They may have produced diplomatic passports. One of the incidents of terrorism is that diplomatic passports are passed out like confetti.

I presume the killers had Libyan diplomatic passports. And apparently the British police assured, in allowing them to leave the country, that possession of a diplomatic passport established that they were diplomats under the Vienna Convention. But, as I have said, a diplomatic passport does not make the holder an accepted diplomat.

With all respect to our British allies, the Libyan shootout demonstrates a capitulation to international terrorism and a serious abuse of diplomatic immunity which weakens the whole arsenal of weapons we can employ against international terrorists.

Thank you very much, Mr. Chairman.

Senator DENTON. Thank you, Justice Goldberg. You have added substantively to the spectrum of consideration regarding legislation, which we previously had in mind, as you can be well aware. The subject of security and terrorism, the name of this committee, is a very large one, and I do not want to detract from the credit you deserve for having raised, in my opinion, two important and valid recommendations; first, that we recognize that in places where there is an ambiguous governmental situation or a lack of authenticity to the assurance that there will be protection afforded by that Government, that we should beef up in those specific instances our Embassy personnel. And it is one of those things—the emperor is wearing no clothes—that has not been taken care of.

And I agree with you that we should and will take the initiative to correct that.

Your second point about a commission to study the implications of the Vienna Convention, People's Bureaus not being embassies, and so on, is in my view also very well taken. And again we will persevere.

Justice **Goldberg**. I would, if you will forgive me, I would ask for—I have come to my own conclusions, but with limited research facilities at the present time.

I would hope that a competent panel of international lawyers explore the doctrine that if one does not perform the functions of a diplomat prescribed by the Vienna Convention forfeits his status as a diplomat assuming even that he is accredited.

Senator **Denton**. We are not going to ask you questions because your statement stands on its own. We will submit some written questions for the record in view of the fact that we are going to have to vote on cloture and then be involved on the floor the rest of the afternoon. We do want to hear from the next witness.

I will defer to Senator Specter and let him handle that as he sees fit. You would acknowledge that even these laws would not stop an eventuality such as the United Kingdom deciding to blink at the issue for commercial reasons.

I would be in favor of a commission—bipartisan, like the Kissinger Commission—to look into the subject of terrorism in the manner this committee tried to in that it is not limited to the Mideast. It is to a degree a coordinated situation in that, as you pointed out, terrorism is the tool by which some totalitarian governments, which I will not mention because I will be quoted out of context, rule their people that way.

And the Soviet Union, for example, to name one, has made a gross bet on the side of supplying terrorists, be they black or red, because they recognize that the threat to the stability of governments rests entirely on the side of the relatively democratic governments. It might also threaten a right wing, autocratic, and on balance we might say unjust government.

But a net around the world, there is no question that the left-wing governments which are associated with the network of protection and support of the Soviet Union are relatively immune to this. And that is again one of the points which we are ignoring and we are not looking into the question.

We have learned recently, sir, that the terror network has been augmented by a drug network of fantastic proportions with the drugs being used to finance the terrorism. This is something that is being blatantly ignored.

Justice **Goldberg**. Yes, Senator, I am a believer in peaceful coexistence whether I like a regime or not. But I learned one thing at the United Nations. I negotiated the space treaty and the arms proliferation treaty with the Russians. They have a favorite word, reciprocity. They use it all the time. And maybe instead of our bland acceptance of what the world knows that Eastern embassies seem immune, Western embassies are not.

I would suggest to those who conduct our foreign policy—the State Department, White House—that the Soviets be told that treatment of terrorism is a two-way street. If they are harboring, training, financing terrorists and then you want to rely upon diplomatic immunity, no way. This is simply unacceptable. I am not saying we go to war on this issue. I hate war. I am a peaceful man, but I know something about diplomacy.

The Russians should be told: you cannot have your bread and eat it. You want diplomatic immunity—in fact, they want an extension of diplomatic immunity. But at the same time you support terrorists who storm our Embassy. I think this is a legitimate and important question.

Senator **Denton**. Well, my final comment, I totally agree with that last recommendation about the use of so-called diplomats. New York City is crawling with so-called U.N. diplomats who are undermining the stability of this country, who are conducting international terrorism, if you will, in murder and planning the support of terrorism, and so on, and specific acts of terrorism.

I agree with you that it is a short-term thing to say that were we to look that in the eye and take what steps are necessary to avoid doing so because they are going to retaliate against us. We are not playing that kind of dirty hardball. We are a civilized nation and with our faults and with such atrocities as may have been committed in the name of the U.S. Government. There is no comparison between the two systems, and they know that. And I have had some, you know, scholarship in international affairs and some experience in a Communist nation. And my pity was for their citizens. There are people in North Vietnam who are suffering under that system. They were worse off than we prisoners were, and I totally associate myself with your remarks and your point of view.

Justice **Goldberg**. They must think, Senator, if you will pardon a last remark—the Soviet Union, I have met with their diplomats and they have some smart ones, very, very bright. They must be laughing at us.

Senator **Denton**. I have had them laugh at me across the table and say, I admit to you that this is a lie, but you wait and see what Congress does. And then Congressmen would repeat the same lies and they were very instrumental back here in affecting policy.

Justice **Goldberg**. The Libyan shootout is a prime example. The Soviets know full well what occurred. They have intimate contacts with the Libyans. They know full well from their intelligence in London that the killers were not accepted diplomats, that the so-called Libyan London embassy was not staffed by accepted diplomats. And they also know that the diplomatic bag of Libya was not bona fide.

The response of the Thatcher government, that we could not do anything other than break off relations because the terrorists had diplomatic immunity, encourages terrorism.

Why did our State Department accept the British statement, without realizing its implications. It is untenable that we support our allies, right or wrong, because they are our allies.

Finally, I commend the British Foreign Office for sending me a straightforward letter saying there was no diplomatic immunity in the Libyan shootout in London.

Senator **Denton**. All right. Senator Specter.

Senator **Specter**. Mr. Justice Goldberg, I have a great many questions for you. There is no time, but I am going to ask you about one subject very briefly. But, first, I want to thank you for coming. It is a pleasure to have you here. I have always been an admirer of yours, the great work you have done on the Supreme Court and as an ambassador.

The one question which I would like you to address, because I propose to introduce legislation on the subject on Monday, is the proposed legislation would make it a crime against the laws of the United States to murder or assault a U.S. Ambassador or a U.S. Embassy like the events of yesterday. I would like your opinion on this legislation.

Justice GOLDBERG. In general, it is an old principle of law that Congress can legislate as a crime actions committed outside our country, against American citizens and try the perpetrators in our courts, if the defendants are before them.

Senator SPECTER. So, you would say that you have to have a jurisdictional base for doing so.

Justice GOLDBERG. The question in my mind is—and I have to research it more—you apparently have—whether the doctrine about abduction still applies. You get into the question of illegal abductions.

Senator SPECTER. There are two questions. One is, do you agree that the United States of America courts would have jurisdiction?

Justice GOLDBERG. There is no question they have jurisdiction if they have the defendant in front of them.

Senator SPECTER. For an assault committed by terrorists on the U. S. Embassy or U.S. Ambassador, no question?

Justice GOLDBERG. That is correct.

Senator SPECTER. And then the abduction question you would want to——

Justice GOLDBERG. I would reserve on because I have not researched it.

Senator SPECTER. I just want to see if Justice Black's statement is——

Justice GOLDBERG. He was a great civil libertarian. He was my colleague and friend.

Senator SPECTER. Beyond the issue of jurisdiction, would you think it an appropriate thing to do if we do have the jurisdiction——

Justice GOLDBERG. We have legislation on the books on this subject. For example, there is a great misunderstanding about our own citizens. An American soldier or officer who commits a crime abroad and is discharged from the Army cannot be court martialed. But he can be tried in a civilian court for this crime.

Senator SPECTER. So you think it would be sound public policy to hold terrorists accountable in U.S. courts?

Justice GOLDBERG. Very much so. Would we allow a soldier to get away with murder because the Army discharged him? Our Supreme Court has said that when a soldier is discharged he cannot be court martialed, but he can be tried in a civilian court.

Senator SPECTER. Thank you very much, sir.

Senator DENTON. Thank you very much, Justice Goldberg. I want to share Senator Specter's expression of admiration for you and especially thank you as chairman of the subcommittee for your very valuable testimony today, sir.

Justice GOLDBERG. Thank you very much.

Senator DENTON. Thank you, sir.

[Written questions of Senator Denton and answers of Justice Goldberg, subsequently submitted for the record, follow:]

RESPONSES OF JUSTICE GOLDBERG TO WRITTEN QUESTIONS OF SENATOR DENTON

DECLARING PNG VERSUS PROSECUTING

Question. You point out that the Libyans in London weren't really diplomats because they weren't officially accredited, and your analysis of why they are, therefore, prosecutable, is impeccable. My question is, what do we do in a case like the Nigerian kidnapping incident? Do we just declare the offending persons persona non grata, or do we prosecute?

Answer. In the Nigerian case, apparently the British had second thoughts. They did not follow the Libyan shoot-out example, since they opened the diplomatic crates and found the doped body of the Nigerian exile. It is my understanding that they are prosecuting all participants without breaking off relations.

RECIPROCAL PROSECUTIONS

Question. If S. 2771 is enacted, would you expect reciprocal prosecutions of U.S. diplomats abroad?

Answer. It is possible that if S. 2771 is enacted reciprocol prosecution of U.S. diplomats abroad could take place. It is, therefore, my suggestion that instead of a bill a joint nonbinding resolution of Congress be adopted condemning abuses of diplomatic immunity.

FRAMING U.S. DIPLOMATS

Question. Is it conceivable to frame a U.S. diplomat abroad of the crime S. 2771 is aimed at?

Answer. It is conceivable, and indeed it has happened that the Soviet Union and other countries in the Eastern bloc have tried to frame American diplomats and some have served sentences because of crimes they did not commit despite their claim of diplomatic immunity.

SOVIET INFLUENCING TERRORISTS?

Question. You mentioned in your prepared statement the recent incident involving the Soviet truck that they tried to pass off as a "diplomatic pouch." Do you see the hand of the Soviets behind the actions of terrorist states in abusing diplomatic privileges and immunities?

Answer. There is no question, from all available evidence, that the Soviets are playing a role in assisting terrorists to abuse diplomatic privileges and immunities. Ms. Sterling documents this in her book.

JUST THE TIP OF THE ICEBERG?

Question. How frequently do you imagine events like the Nigerian kidnapping in London and the Soviet truck incident are occurring? Based on your experience as a diplomat, are we just seeing the "tip of the iceberg"?

Answer. The fact is, experience demonstrates, that the Libyan shoot-out is not an isolated incident. We are not seeing the tip of the iceberg, rather we are experiencing abuses of the diplomatic immunities afforded by the Vienna Convention.

UNITED STATES INVOLVED?

Question. Just for the record, do you believe that or know if the United States as a matter of policy, engages in systematic abuses of the diplomatic privileges and immunities granted by the Vienna Convention?

Answer. I know of no instance where the United States, as a matter of policy, engages in systematic abuses of the diplomatic privileges granted by the Vienna Convention.

CAN WE LEGISLATE THE PROBLEM AWAY?

Question. As you know, Italian prosecutors have determined that the Bulgarian Government was involved in the assassination attempt on Pope John Paul II, and that a van with diplomatic immunity was used to spirit Mehmet Ali Agca's co-conspirators out of the country. I would like your comments, first of all, based on your experience as a diplomat, on the allegations about the Bulgarian Government's involvement, and secondly, on whether or not behavior of this type by a supposedly legitimate government can be corrected by legislation.

Answer. I do not believe it appropriate for me to comment on the Italian prosecution of the man who attempted to assassinate Pope John Paul II and the Bulgarian connection. I have not read the record and, as a matter of policy, do not believe I should comment without reference to the record.

DIPLOMATIC DRUG SMUGGLING

Question. I am sure you are aware of the expulsion from Canada earlier this year of a Nicaraguan diplomat who was smuggling cocaine into Canada in diplomatic pouches, apparently with the knowledge and consent of his superiors at the Foreign Ministry in Managua. Do you have any ideas on how to stop abuses of this type?

Answer. If Canada had probable cause that a Nicaraguan diplomat was smuggling cocaine into Canada in diplomatic pouches, it is my view that Canada would have the right, under the Vienna Convention, to search the diplomatic pouches.

Senator **Denton**. Professor John F. Murphy, who has also been previously introduced, is now before us and I would like to thank him for his patience and also for the effort and interest manifested by appearing here today. Professor Murphy.

STATEMENT OF PROF. JOHN F. MURPHY, PROFESSOR OF LAW, VILLANOVA UNIVERSITY

Professor **Murphy**. Thank you very much, Mr. Chairman, and good morning, Senator Specter, Ambassador Goldberg, ladies and gentlemen.

If I might, Mr. Chairman, could I ask how much time I have. How long are we going to proceed?

Senator **Denton**. We have a vote.

Senator **Specter**. We have to be on the floor to respond to this live quorum call in advance of noon if we wish to be marked present.

Senator **Denton**. That is right. We had a live quorum at 11:30. It is 15 minutes past that now. And we have to be there by 12. So we are stuck with 15 minutes total time before we are just gone for the day. I do not mind doing this again if you want to come back. Or we can hear your statement and submit questions to you in writing.

Professor **Murphy**. Well, if I understand you correctly, Mr. Chairman, I have about 10 minutes in which I can speak. What I will do is speak for 10 minutes. I believe that you have before you a copy of my written testimony, so I do not believe it is necessary for me to repeat that. I will try to highlight a couple of points in that written testimony during the 10 minutes that I have.

[The prepared statement of Professor Murphy follows:]

PREPARED STATEMENT OF JOHN F. MURPHY

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before your subcommittee today to address S. 2771, a bill to protect the internal security of the United States against international terrorism by making it a federal felony for a foreign diplomat in the United States to use a firearm to commit a felony. As you know, the subcommittee held earlier hearings on this bill on July 24, 1984. In my remarks I will refer from time to time to points made in the statements and testimony presented at the July 24 hearings, as well as attempt to advance a few observations of my own.

There is no doubt that the problem S. 2771 addresses--state sponsored terrorism under the cover of diplomatic status--presents a major threat to international peace and security and should be regarded as a serious crime. However, although I share the concern that prompted the introduction of S. 2771, I seriously doubt whether the approach taken by the bill is an appropriate response to the problem of state sponsored terrorism.

As currently worded, S. 2771 would violate the international legal obligations of the United States, since Article 31 of the Vienna Convention on Diplomatic Relations provides in categorical terms that diplomatic agents enjoy immunity from the criminal jurisdiction of the receiving state. To be sure, in his statement before the subcommittee on July 24, Senator Arlen Specter indicated that the terms of S. 2271 should not become effective until the President renegotiates the terms of Article 31--perhaps pursuant to S. Res. 395, which would call on the President to renegotiate Article 31 of the Vienna Convention to eliminate immunity from arrest and prosecution for diplomats guilty of murder and other armed offenses (Statement of Senator Arlen Specter, p. 3). At a minimum, therefore, S. 2771 should be revised to state explicitly that it would not come into effect until such time as Article 31 of the Convention has been amended along the lines called for by S. Res. 395. The United States should be careful to avoid any appearance that it does not adhere faithfully to its international law obligations.

In his prepared remarks before the submcommittee on July 24, Acting Legal Adviser Daniel McGovern reported (p. 2) that the executive branch has not yet taken a position on the issue whether the Vienna Convention should be amended along the lines envisaged by S. Res. 395. Although S. Res. 395 is not the subject of these hearings, the issue whether the Vienna Convention should be amended so as to limit the absolute immunity from the criminal jurisdiction of the receiving state provided by Article 31 is inextricably intertwined with the issue whether S. 2771 should be adopted. With respect I would suggest that it would be a grave mistake to amend Article 31 of the Convention as suggested by S. Res. 395.

I hold this view in part because I believe that diplomatic immunity is a relatively minor aspect of the problem of state sponsored terrorism and that eliminating such immunity would not deter the Qaddafis of the world. It is true that, but for diplomatic immunity, it would have been possible for Great Britain to have prosecuted the person or persons responsible for the machine gunning incident at the Libyan Embassy in London. Absent diplomatic immunity, justice might have been done in that case. But that case, I would submit, was an aberration even by Qaddafi's standards. Assassinations by Libyan agents have usually been carried out in a sub rosa fashion, often while utilizing a diplomatic cover. This demonstrates the importance of the proposal advanced in the London Economic Summit Declaration on International Terrorism, issued June 9, 1984, that there be "consultation among the Summit countries and as far as possible cooperation over the expulsion from their countries of known terrorists, including persons of diplomatic status involved in terrorism." (Statement of Acting Legal Adviser McGovern, p. 4.)

I would suggest, moreover, that even if it proved possible to apprehend, prosecute, and punish a Libyan diplomat-terrorist, Qaddafi would not be deterred from future efforts but would simply replace the "diplomat" in question with another agent. The same would be true for the leaders of other states willing to sponsor international terrorism or "wars by assassination."

At the Second Conference on International Terrorism sponsored by the Jonathan Institute on June 24, 1984, in Washington, DC, Secretary of State George P. Shultz reported that seventy or more terrorist attacks in 1983 probably involved significant state support or participation. As Secretary Shultz pointed out, "[s]tates that sponsor terrorism are using it as another weapon of warfare, to gain strategic advantage where they cannot use conventional means." (Address by the Honorable George P. Shultz, p. 10). This is a problem that greatly transcends difficulties created by diplomatic immunities. The sad fact is that the United States and other democratic countries have so far failed to come to grips with the problem of state sponsored terrorism. A discussion of steps that might be taken against state sponsored terrorism is beyond the scope of this brief statement. But to the extent that quiet diplomacy fails to induce a change in the offending state's behavior--and the record increasingly indicates that it has--democratic states will have to turn to more coercive measures. These could include, among others, the vigorous pursuit of international claims against the countries responsible;* a united and widespread use of economic sanctions; and, as a last resort, the use of armed force. With respect to all of these measures, it is important, as suggested by Secretary Shultz, that they be taken "within the rule of law, lest we become unwilling accomplices in the terrorist's scheme to undermine civilized society." (Address by the Honorable George P. Shultz, p. 8).

As to the approach taken by S. 2771 and S. Res. 395, I would suggest that not only would it be of limited effectiveness against state sponsored terrorism, it might also create grave problems for American diplomats abroad. This possibility was stressed in Mr. McGovern's statement and was the focus of considerable discussion and debate in the July 24 hearings. I would like to return to this debate but start from a slightly different perspective.

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*See, in this connection, Lillich & Paxman, "State Responsibility for Injuries to Aliens Occasioned by Terrorist Activities," 26 American University Law Review 217-313 (1977).

If we assume that S. 2771 would not become law unless and until Article 31 of the Vienna Convention were amended to ensure that the United States would be in compliance with its international legal obligations, we should ask what a revised Article 31 might look like. Mr. McGovern suggested that the final product of any amendment process might be a Vienna Convention that expanded diplomatic privileges and immunities (see Transcript of Proceedings, July 24, 1984, p. 50). Perhaps. But I would suggest that the more likely result of a renegotiation of the terms of Article 31 would be a provision that sharply cut back on the scope of diplomatic immunity from the criminal law of a receiving country. In particular, there is substantial sentiment in many countries that diplomats who engage in espionage should not enjoy immunity from criminal process. Revision of Article 31 to permit prosecution of diplomats by a receiving country for espionage would create a substantial risk for American diplomats, since those opposed to U.S. interests routinely allege that American diplomats are in reality all agents of the Central Intelligence Agency. Iran, it will be remembered, claimed the right under international law--a claim emphatically rejected by the International Court of Justice--to try for espionage the American diplomats seized in Teheran. We should be wary of embarking on a process that might provide countries similarly inclined with a legal basis for such prosecution.

In truth, no one can be sure what the results of a renegotiation of Article 31 of the Convention would be. But the likelihood of its opening a Pandora's box would be considerable. Absolute diplomatic immunity from the criminal law of a receiving country has served United States' interests well. It should not be disregarded because of its abuse by the likes of Qaddafi. Rather those who engage in such abuse should be held to account.

In closing, Mr. Chairman, I would like to express my appreciation for the subcommittee's desire to explore ways that the United States might effectively respond to the danger of state sponsored terrorism. I would respectfully suggest, however, that alternative approaches to those suggested by S. 2771 and S. Res. 395 might be more helpful.

Professor MURPHY. However, since the discussion this morning has wandered into a great variety of areas, some of which I have vital interest in, perhaps I might also deviate very briefly from my prepared remarks and indeed from the substance of Senate bill 2771 and Senate Resolution 395.

Senator SPECTER. Deviation is not unknown in these proceedings.

Senator DENTON. You may rest assured that this is not the last time we will be having witnesses on this general subject, and I assure you that the next time you come you will be first.

Professor MURPHY. Thank you. That is very kind of you. My deviation would be to address myself very briefly, Senator Specter, to three points that you made during your remarks and as part of the discussion that you had with Ambassador Goldberg.

First, with respect to the question of jurisdiction over terrorists that come before U.S. courts, I might mention that, if the terrorist activity involved an attack against a diplomat or against diplomatic premises, there is already jurisdiction under U.S. law as a result of passage of legislation implementing the U.N. Convention on internationally protected persons which allows the United States to exercise a form of universal jurisdiction over attacks against diplomats and diplomatic premises.

Senator SPECTER. Is there a criminal statute where we could prosecute today if we got jurisdiction over the terrorist?

Professor MURPHY. Yes. In connection with an attack on a diplomat or a so-called internationally protected person, that law is already on the books. If I understood you correctly, however, you raise the question more broadly, as to possible attacks by terrorists against U.S. citizens.

Such a proposal raises several difficulties. One difficulty is that it is questionable under international law whether the mere fact that the victim is a national of a country gives that country jurisdiction to prosecute the alleged offender. However, I think a good case could be made that, if the crime in question constituted international terrorism, as defined even now under U.S. law, that crime could be subject to a form of universal jurisdiction.

So if anybody who committed an international terrorist act was before U.S. courts, these courts might well be able to exercise jurisdiction over such a person consistent with international law. At least one can make an argument to that effect.

Senator SPECTER. So, as you understand the law, Professor, at the moment an internationally protected person is only a diplomat.

Professor MURPHY. No. The concept of internationally protected persons goes beyond diplomats. It includes but is not limited to special guests, such as the Olympic competitors that came to the United States, although the primary pupose is to protect diplomats.

Senator SPECTER. Would it cover an employee of the U.S. Embassy, a U.S. citizen who is an employee of the U.S. Embassy?

Professor MURPHY. Yes. It basically covers anybody that has diplomatic immunity. There is a correlation between this convention which makes it a crime to attack an internationally protected person and the concept of diplomatic immunity. It goes beyond diplomatic immunity. It is fairly broad in its coverage.

Senator **Specter**. If we were to legislate that U.S. citizens be covered from terrorist criminal attacks, that would cover a class of persons not already covered by existing law.

Professor **Murphy**. That is correct. Such legislation would raise some difficult issues of law and policy about which reasonable persons might differ. But the argument can be made that international terrorism should be regarded now as a crimelike piracy which is subject to universal jurisdiction. That is, the idea that anybody who gets hold of a pirate can try him. One can similarly argue that anybody who gets hold of an international terrorist can try him.

I would suggest that any legislation that might be introduced attempt to define international terrorism. In effect, such legislation would amount to a claim that international terrorism has now become the kind of international crime that is subject to universal jurisdiction.

As I remember, Senator Specter, in your remarks you raised the question of how one can apprehend, prosecute, and punish international terrorists. As you know from your experience, this is a complex question involving issues of extradition, deportation, the whole question of rendition, that is, getting terrorists back from someplace where they have fled from the country where they committed the crime.

You mentioned the possibility of forceful abduction of international terrorists. I would suggest that forceful abduction of terrorists from another country would constitute a violation of our international legal obligations. The Eichmann precedent supports this proposition.

Senator **Specter**. Would you repeat the proposition. You say Eichmann precedent is support for what proposition?

Professor **Murphy**. Support for the proposition that forceful abduction abroad of a person from another country, contrary to the wishes of the government of that country, violates the territorial sovereignty and political independence of that country and hence international law. I believe there would be uniform agreement on that proposition and in fact Israel implicitly admitted as much in a settlement that came about between Argentina and Israel in the Security Council. Whether U.S. courts under the Kerr/Frisbee rule are going to accept or decline jurisdiction is a different question.

Senator **Specter**. Is it not clear under *Frisbee* and under *Kerr* that U.S. courts will accept jurisdiction and will try such an individual?

Professor **Murphy**. Yes. It is quite clear with the possible exception of the situation envisaged in the *Toscanino* case where there are——

Senator **Specter**. That was a matter of torture.

Professor **Murphy**. That is a different situation, to be sure. On the other hand, I think the United States should be very careful not to violate its international law obligations.

Senator **Specter**. But what is the consequence of violation of territorial sovereignty on the legitimacy of the prosecution back in the United States? That prosecution is legitimate, is it not?

Professor **Murphy**. Yes, probably. The reason I say probably is that an issue raised in the *Toscanino* case has never been decided by the Supreme Court of the United States. *Toscanino* indicated as a second basis for its decision that, if an abduction violated international law and a protest of this violation by the country where the forceful abduction took place, that in itself might be a basis for the court to decline jurisdiction.

Moreover, the basic point I want to make is we should be very careful not to violate international law, because we might be subject to the same kind of treatment, the old reciprocity problem.

Senator SPECTER. Well, assume that Britain had not extended diplomatic immunity for the reasons Justice Goldberg said to the gunman who shot the British policewoman, and assume there was evidence that Qadhafi had participated, acquiesced, and ordered that murder, would you say that if Qadhafi came before the British court in the context where Libya's international sovereignty had been violated and that the British courts should not assume and be held to have jurisdiction to try Qadhafi.

Professor MURPHY. I am suggesting that we should not in fact ignore international legal obligations in dealing with Qadhafi.

Senator SPECTER. I have given you one where we put it in pretty bald terms, and if we are going to control terrorism, we may have to take what Kerr and Frisbee say and proceed with some boldness and not suggest that because there are some unanswered questions that there may be a violation of Libyan sovereignty where the head of the Libyan Government or where the sovereign—you may have a king—sovereignty may be violated and the sovereign may be violated, but the sovereign may be liable under accepted principles for murder. So, what is your judgment, Professor?

Professor MURPHY. My judgment, Senator Specter, is that there are other ways to get at the problem; as I say in my statement, that there are other and more desirable ways to get at the problem.

Senator SPECTER. All right. Tell me. I have to go vote in about 30 seconds, but tell me, if you can, briefly. Qadhafi is guilty of murder under regularly accepted principles and he comes into custody of a British court and they have him before them, but there is a valid assertion of violation of Libyan sovereignty. You would not say the British court should not try Qadhafi.

Professor MURPHY. I would say the British courts should be very leery of trying Qadhafi.

Senator SPECTER. Yes or no. Are you going to try him or not? "Leery" does not answer the question.

Professor MURPHY. I think I would say no because I think it would create international complications and a pattern of behavior in the world that——

Senator SPECTER. I would suggest that there are more international complications created by the current status of events. But you say there are alternatives. What is an alternative as to how you deal with Qadhafi under those circumstances?

Professor MURPHY. One alternative is to take some meaningful economic sanctions against the Government of Libya. The Western alliance, the British included, have not been willing to face up to the problem of Qadhafi and state-sponsored terrorism.

Senator SPECTER. Anything besides meaningful economic sanctions?

Professor **Murphy**. Under certain circumstances an international claim might be brought against Libya, and in a limited number of situations the use of armed force might be justified. But the use of armed force against countries supporting international terrorism is a highly controversial proposition, as you know, from these hearings.

Senator **Specter**. Invading Libya would be a less problemsome alternative than holding Qadhafi before a British court in the face of an objection that Libyan sovereignty had been violated?

Professor **Murphy**. I would not want to speculate on the use of armed force without knowing the precise circumstances in which much force might be used. But one can envision a proportionate use of armed force against Libya because of its violation through the use of force of the territorial sovereignty of Great Britain.

Mr. **Lisker**. Professor Murphy, Senator Denton asked me to continue with some of his questions. My name is Joel Lisker and I am the chief counsel of the subcommittee.

And on the point of the use of armed force, Senator Denton raises a similar question to that of Senator Specter. How, from a practical standpoint, can a sanction like that be employed against the most egregious terrorist state, the Soviet Union?

Professor **Murphy**. I think as a practical matter it cannot. Indeed, as far as the Soviet Union is concerned, economic sanctions would not be a particularly effective weapon, because we have been trying that kind of approach for years and the economic damage has been more to us than to the Soviet Union.

The situation with respect to the Soviet Union—I believe the best approach is to try to influence the other countries of the world in their attitude not only toward the Soviet Union but also toward legal doctrine. In the United Nations and elsewhere we are involved in a struggle for law and justice; that is, we are attempting, to promote our ideas concerning what international law and justice should be.

And I think it is necessary to try to uphold some of these concepts, including the principles that are espoused in the Vienna Convention. I have not yet testified here, though I have in my written statement, about Senate bill 2771. In my view, Senate bill 2771 clearly would violate article 31 of the Vienna Convention. Both the language of article 31 and its negotiating history, as well as experience under the convention, support this conclusion.

The real issue then becomes whether there should be a renegotiation of the Vienna Convention, as called for by Senate resolution 395. I believe it would be a grave mistake to try to renegotiate the Vienna Convention because one of two things or both would happen. Either we would end up with a convention that would further state-sponsored terrorism under the cover of diplomatic immunity, or we would end up with a convention that would put limits on diplomatic immunity that would impact adversely on U.S. diplomats; let us say a convention that allowed trial for espionage.

A number of countries in the world claim that all American diplomats are members of the CIA devoted to espionage. Iran argued before the International Court of Justice that it had the right under its national law to try our hostage diplomats for espionage.

The court unanimously rejected Iran's claim. So I think we face a situation where renegotiation of the Vienna Convention on Diplomatic Relations would be a mistake.

Unfortunately we also are in a position where neither economic sanctions nor use of armed force are feasible options with respect to the Soviet Union.

Mr. **Lisker**. What about limited military response? I am not suggesting an invasion, but either a preemptive or postoperative strike?

Professor **Murphy**. Against the Soviet Union?

Mr. **Lisker**. No. Against, in this particular case, against the Government of Iran since it is widely believed to be supporting the Shiite faction which engineered this operation.

Professor **Murphy**. Well, under the U.N. Charter, basically the situation is that you refrain from unilateral use of armed force except as an act of self-defense. A case can be made for a preemptive strike or possibly even a strike after a terrorist act has occurred as long as the use of force is proportionate to the threat or the use of force that brought about the act of self-defense.

I agree with Ambassador Goldberg that the U.N. Charter is not a suicide pact.

Mr. **Lisker**. Well, then if a preemptive strike is justified or an after-the-fact strike might be justified on a limited basis in certain circumstances, would you agree that on an individual basis a strike might be made to take out one person or perhaps a small group of people, selectively, rather than engage in a military effort?

And what I mean to say is, do you think that assassination should be authorized preemptively or after the fact of those who are deemed to have perpetrated the act?

Professor **Murphy**. I am against assassination because this is clearly lawless activity. I think it is important that we try to stop this deviation away from the rule of law. If we fail, we will end up with the so-called law of the jungle.

Mr. **Lisker**. The El Jihad el Islami, the group responsible, is not a state group. That is, on the basis of the Islamic holy war, it is a group which transcends any state and attempts to legitimize itself by claiming to be engaged in a holy war on behalf of Islam. So how can you expect any sort of normal state response from such a group which is amorphous, to say the least?

Professor **Murphy**. You do not expect a normal state response from a criminal group. What we have here is a criminal law enforcement problem. Some states simply are not willing to prosecute and punish such individuals; one cannot expect a terrorist to agree to the rule of law. But one hopes that statesmen and government officials will.

Mr. **Lisker**. Senator Denton had one final question for the hearing, and I believe we will have prepared written questions which we hope you will be able to respond to in a reasonably short time.

Which are the many countries that you mention in your statement that believe that diplomats that engage in espionage should not enjoy immunity from the criminal process?

Professor **Murphy**. When I was involved in the project that Senator Denton mentioned, the project on the legal aspects of international terrorism, one of my responsibilities was to look into the question of internationally protected persons or diplomats. In the course of my research I came across discussion, at least in the negotiating history of the convention and the U.N. Convention on Internationally Protected Persons, where several representatives offered the concept of diplomatic immunity for diplomatic espionage.

But you will not find countries going on record in favor of limiting diplomatic immunity.

Mr. Lisker. Well, can you identify the countries that you are referring to? I mean, are we talking about the United States, the United Kingdom, the Federal Republic of Germany?

Professor Murphy. The countries that might regard U.S. diplomats as being involved in espionage?

Mr. Lisker. Well, no. I thought you said that many countries believe that diplomats who engage in espionage should not enjoy immunity from criminal prosecution. And what I am saying is which countries believe that, if you can recall.

Professor Murphy. Perhaps I should restate my position here. I would not be willing to say that countries X, Y, and Z believe that diplomats should not enjoy diplomatic immunity, because in fact I think if you examine their formal statements you will find that they favor absolute diplomatic immunity, and, of course, this position is reflected in the Vienna Convention on Diplomatic Relations.

What I am suggesting is that there are a number of countries in Latin America, for example, that are greatly concerned about diplomatic cover being used for purposes of espionage. And I think there is a good deal of sentiment in certain Latin American countries and certainly in some countries unfriendly to the United States in the Middle East that, if the question of absolute diplomatic immunity under article 31 is to be reopened with a view to limiting it, diplomats would be subject to prosecution for certain crimes, the crime of espionage would be at the top of the list.

As I say in my written testimony, you open up Pandora's box if you renegotiate the Vienna Convention which might result in a provision permitting prosecution for espionage.

Mr. Lisker. Well, that concludes the prepared questions. I want to apologize for the imposition on your time. However, I think that it has been very useful insofar as you have been able to testify to add to this debate. And I know that Senator Denton would like you to consider an invitation subsequently, because this is obviously not the last hearing on this issue since there seems to be an honest difference of opinion on the approach to be taken.

And I am sure that the committee staff will be in contact with you after this hearing to solicit further information from you and to run by some ideas that develop or emerge in the process.

So, on behalf of Senator Denton and the committee, I want to thank you very much for your appearance here today. And, as I said, we might be submitting some written questions which I hope, with the press of your other business in trying to teach at Villanova, to be able to get a response back. Thank you very much, sir.

Professor Murphy. Thank you.

Mr. Lisker. I think that concludes the hearing, subject to the call of the Chair.

[Whereupon, at 12:11 p.m., the hearing was adjourned.]

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